

1 two specimens of blood, a saliva sample, a right
2 thumbprint and a full palmprint of each hand. So there
3 are a substantial number of requirements that must be
4 filled out.

5 We do apologize for having only one set. If the
6 Department of Finance would like to see those and to
7 circulate to your Commission. And I'm here to respond to
8 your questions.

9 Thank you.

10 CHAIR PORINI: Questions from Members?

11 Okay, then we'll go ahead.

12 MR. STEELY: Good morning.

13 First off, a little background.

14 CHAIR PORINI: You need to speak directly into
15 the microphone.

16 MR. STEELY: I'm sorry.

17 A little background on my career. I first
18 started with Tuolumne County sheriff's office right out
19 of college in 1971. I have worked in every section of
20 the Sheriff's Department, and have been the Supervisor of
21 the Civil Records-Coroner section for the last 15 years.
22 I'm the senior lieutenant with the Sheriff's Department
23 and third in command of the Sheriff's Department at this
24 time.

25 Talking about the sex registrants prior to the

1 1996 law change and the 290 registrant, the Tuolumne
2 County Sheriff's office had approximately 12 to 20
3 registrants at any one time in our files. At that time,
4 the files consisted of mainly just registered sex
5 offenders that were child molesters.

6 When the law changed in '96 with an emergency
7 legislation that went into effect, which meant that
8 within about three months I had to write a policy
9 covering the full extent of the new Megan's Law, as it is
10 known, when Megan Kanka was killed in 1994.

11 The registration requirements on that section
12 extended our job and our requirements. The person no
13 longer, after release -- even though he might have
14 preregistered in our jail, the jail or the State has
15 three days in which to send that to the law enforcement
16 agency, where that person is likely to live, and to the
17 state.

18 Upon entering our county, whether right from
19 prison, then they have 5 days in which to come in and
20 register to us. Prior to that, it was 14 days, and then
21 that was changed to 10 days. So they've shortened the
22 time limit extensively on that.

23 Also, when that law changed, we had to notify
24 all the sex offenders within our jurisdiction of that
25 change, and we had to do that in writing, we had to send

1 them a letter advising them they had to annually register
2 within five days, which was another change from ten to
3 five days.

4 The extension on that was that we had a
5 different classification of registrants. Our
6 registration went up to 115 registered sex offenders in
7 our county, 5 of which are "high risk" and only 3 of
8 which are "other." The "other" sex offenders are
9 exhibitionist stuff, which means that we cannot publicly
10 release any of their information.

11 The biggest change, as far as law enforcement
12 was concerned on the registration end of it, was that all
13 these people became then subject to public release of
14 their information to people at risk. In other words,
15 juveniles or women, that was risk under the rape -- under
16 260 section of the Penal Code.

17 The classification of "high risk" was the same
18 classification as the "serious," the only difference was,
19 when they added all the different sections, now that it's
20 covered under that, which is quite extensive if you look
21 at the 290 section, it covers everything from kidnapping
22 with intent to commit a sexual act, to fondling juveniles
23 or minors, to rape -- forcible rape, murder with intent
24 to rape. Those were all serious sex offenders. This was
25 raised also to the "high risk" which, again, we don't

1 have that many in our county, but the "high risks" had to
2 be convicted of at least two or more of those violent
3 crimes and on separate occasions, so they became a "high
4 risk."

5 The difference between that, that's important,
6 is on that definition, is that on a high-risk offender,
7 we can actually use the news media, we can make public
8 bulletins and we can actually release their address, a
9 whole gamut of what they have done -- their complete
10 criminal history to what they were charged with. But
11 nothing that could possibly identify -- the only limits
12 of that is we cannot release anything that would possibly
13 identify the victim of the crime.

14 So on the serious sex offenders, we can release
15 the information, but it has to be done only to the people
16 at risk. And that was a permissive -- that was a
17 "permissive," in that it says that "you may do it"; but
18 when the public is at risk, that means "we shall do it."
19 It's not really permissive in our eyes, when we have
20 that.

21 Part of the enforcement, again, on the
22 registration, we do come up with things that end up being
23 an enforcement issue. One of our latest ones was
24 a high-risk offender that we learned had worked on school
25 grounds. He also worked as a coach for the Little League

1 and was a Boy Scout leader. And it came to our knowledge
2 in a roundabout way. We got this information not from
3 him; we got this information from one of our -- one of my
4 deputies that actually went out and saw the guy, and he
5 was working as a bookkeeper at a school area that -- it's
6 an off-campus-type school, where they also have other
7 types of things, sort of like hairdressers, where they
8 teach cosmetology, some other things; plus when the kids
9 get in trouble and they get kicked out of high school,
10 they get to go to this school and continue their
11 education.

12 So because of this high-risk issue on this
13 individual, we then had to ^{tail} tale that and do a
14 notification. We had to notify the employer, we had to
15 notify the school, we sent posters to the Little League
16 group,
17 we also went to the parents of all the kids that was in
18 the group because he was known to be a sex offender on
19 small boys. And we also went to the Boy Scouts.

20 We were unable to convict him of anything due to
21 the fact that he wasn't on parole anymore and there was
22 no requirements for him not to contact these kids. But
23 we were able to have him displaced from all of these
24 different positions, and so that he had a less likelihood
25 of having contact with the victims of his crime -- type

1 of crime.

2 Several others we have had is a subject -- we
3 learned by an officer who made a stop on a guy one night,
4 we learned that he was a "high risk" but not registered
5 in our county. We arrested him; we booked him in our
6 jail. He was out of our jail within about 40 minutes.
7 We found out where he lived. And we have a policy that
8 any high-risk or serious offender that lives within a
9 radius of one mile of a day care center or a school,
10 that that school or day care center must be notified of
11 that individual's address and location with his
12 photograph, his job, his car license, just in case he is
13 an offender.

14 That next morning, I went out personally to
15 serve the papers on him; but one of the requirements
16 under that law is, before I can make a notification to a
17 possible victim in that crime, I have to go to the
18 address that he is listed, and I have to verify that he,
19 in fact, lives at that address.

20 Well, when I got to that address, I found out
21 that at the time he got released at 2:00 o'clock in the
22 morning, he went out and got a Ryder truck. He had
23 purchased that house. He abandoned his purchased
24 residence, moved out all of his stuff and was gone,
25 before we got there six hours later.

1 So we have never yet -- we still have a felony
2 warrant for this individual. But at least the kids
3 within that neighborhood that he had moved into were
4 protected, and that's what the law was meant for.

5 Other requirements of that registration was the
6 900 number at the state and the Megan CD-ROM, which we
7 receive on a monthly basis. Of that CD-ROM, it has all
8 the registered sex offenders within the state. It has
9 approximately 65 percent of all the photographs of these
10 sex offenders that they've been able to get. It also has
11 two sections, there's a public -- there's a public
12 section and a law enforcement section.

13 The public section has available to the
14 public -- it has their name, tattoos, aliases, ZIP code,
15 the area they live in, and all the different sex offenses
16 they were convicted of -- not dates of when or anything
17 else. The law site has had an address, and it also
18 includes the place of work, vehicle license, and it also
19 has in that his address and dates of when he was arrested
20 and convicted of those charges. So if we're trying to do
21 a follow-up charge on it, we can actually look those up
22 right on the CD-ROM, right in our office.

23 The public release of that information that's
24 contained in that CD-ROM is a longer -- it's not that
25 they just come in and look at it. What they have to do

1 is, they have to come in and fill out a form that's
2 required by the state department. And that form, besides
3 their name and address, has to contain why they want to
4 view it, for what reason; it has to have a warning on it,
5 telling them whether it's a misdemeanor or felony, it
6 depends on how they violate it, if there's any crimes
7 committed because of the information received from that;
8 and they also have to be advised that that form will be
9 kept for five years, on file.

10 Once you have that form, those people also have
11 to produce a California driver's license or I.D. card.
12 That's the only identification that's allowed on that
13 under the law. And they have to be 18 years of age. And
14 another notice on there, it says right there that they
15 must tell us that they are not a registered sex offender
16 in our state or any other state.

17 So once we have that signed by them -- we always
18 make a copy of the driver's license and attach it to that
19 form -- they are then brought in, and a sergeant then
20 sits with them, and they're able to view any of the
21 public information on that CD-ROM.

22 And we're getting a lot of those. When we first
23 opened up, we averaged about 50 a year, requests for
24 that. Last year, we had 111 requests for viewing of that
25 on the CD-ROM. Plus, we did 35 releases at the schools.

1 We also -- we have that same disk on laptops, and we
2 attend the safety fairs and all the schools, when our
3 school officers take it in on school nights, parent
4 nights, and people are then allowed to look at it from
5 the schools.

6 From that, we have had several convictions where
7 people have said, "Well, that's my neighbor and his
8 address is -- his ZIP code is in Modesto and he's been
9 living up there and not reported it to us. We've had
10 several like that.

11 We had one woman that found out that her
12 husband, as of two months, was a high-risk sex offender,
13 and hadn't notified her, so we were able to advise her
14 because she had kids in the house.

15 So the CD-ROM is very valuable and it's very
16 effective for what it does. There is quite a few
17 limitations with it.

18 It does help law enforcement in several
19 different ways. We can do a line-up with it. It's very
20 effective. We can take pictures and make a line-up for
21 criminal prosecution. It also creates a full poster with
22 the person's photograph, aliases, names, tattoos,
23 everything on it that we are able to give to the schools.
24 And we try to give them to all the schools, when anybody
25 moves within a mile radius of a grammar school or a

1 two-mile radius of a high school, that is all
2 releaseable. And that's the main reason we use the
3 CD-ROM.

4 The CD-ROM also, every quarter, I have to get on
5 and get a password for the law enforcement site -- and it
6 changes every four months -- the law enforcement site and
7 the public site. And only myself and my sergeant has
8 that code. We're the only two; plus the school officers,
9 on theirs, that can access those codes. And the school
10 officers are only given that code when and if they're
11 going to release the information or have a school outing.

12 Notification in the field -- it comes in handy.
13 That's also another law enforcement part of it, which is
14 separate from the registration: Notification in the
15 field. Officers are required to notify victims or
16 potential victims if they gain knowledge that that person
17 may come in contact with that sex offender. That can be
18 anything from a vehicle stop, where we run a check on
19 the individual, find out he's a sex offender and there's
20 a person in that vehicle with him that matches his
21 victim -- types of victim, I should say. That officer
22 can tell those victims at that time that the person
23 that's with them is a sex offender.

24 So that's the public notifications that we do,
25 along with the posters for the schools.

1 Our "high risk," the five that we have --
2 correction, the four that we have -- three of those are
3 in prison. Only one lives in our county. And what
4 happens, when they preregister, they give our county as
5 their "possible," when they're going to be released of
6 where they're going to live, so it comes out as being our
7 "high risk."

8 Few of them ever return to that county. They'll
9 go to another county, usually, so they have to be
10 registered completely all over, at that other county.

11 And the registration is completely different
12 than the enforcement. Registration is a clerical act,
13 that takes a clerical person approximately 38 minutes to
14 register an individual, photograph, thumbprint. Every
15 year they have to come within five days and then you do
16 it all over again.

17 Also, anytime they change their address, they
18 have five days in which to notify us.

19 If they move out of our county, they have to
20 notify us in writing they're going to move and where
21 they're going to move to. And they have ten days in
22 which to get that to us.

23 If they're a transient and have no known address
24 but they're in our county, they have to register with us
25 every 90 days.

1 And they have to bring in proof of where they
2 registered to our clerical staff.

3 The only time that we check up on them as law
4 enforcement is when something comes to our attention that
5 that person has either falsified that form and no longer
6 lives there or has moved. And we've had several of those
7 where we send officers out to check the address and that
8 person doesn't live there. Then we go to the D.A. and
9 get a warrant and we do arrest them. We've had six
10 arrests in the last two years just on failure to change
11 the addresses.

12 They also, on the registration, when they have
13 to register, if the person does not know how to read, if
14 he is illiterate, the clerk has to read to him and has to
15 fill out the registration for him. If he can not sign
16 his name, they have to witness his "X" and sign it with
17 that, indicating what he has done.

18 Thank you.

19 CHAIR PORINI: All right, Mr. Burdick?

20 MR. BURDICK: Thank you very much, Madam Chair
21 and Members of the Commission.

22 I'd just like to hit on, again, a couple of the
23 key points of this issue, we're talking about Part A, and
24 that really gets back to your TC-9 page and the
25 definition of "enforcement." And I think that's what we

1 really have to look at, and the question of: Is this
2 directly related to the enforcement of a crime?

3 And what I'd like to do, is to play a little
4 historian again -- I'm sorry for that.

5 But as you know, all of these mandate laws and
6 the constitutional initiative were really sponsored by
7 proponents of local government and their supporters.
8 And I actually had the opportunity to participate in
9 advising Mr. Gann and the members in the drafting of this
10 constitutional provision.

11 And this provision relating to the enforcement
12 of crimes was put in there specifically to eliminate --
13 or at the agreement of local government, that when police
14 officers are out arresting people, they have the
15 flexibility of who they arrest and when they arrest those
16 people. So for new crimes -- when we felt there was
17 going to be a change in crimes over the year, what is a
18 crime in one year may change to a different year, that
19 was not going to be a reimbursable mandate. We did not
20 feel it was fair at that time for the state to be paying
21 for the police officer when they're out in the field,
22 making an arrest and enforcing the crimes. So that's
23 what we're talking about in crime enforcement. That's
24 why it is spelled out very specifically in here. We're
25 talking about the enforcement provision, when you create

1 a new crime.

2 And so that's why it says, "directly related to
3 the enforcement of that crime."

4 And so what we're really talking about is when
5 you're really the patrol activities of city police and
6 sheriff's department people.

7 I think that Ms. Stone's analogy to registering
8 for selective service is exactly what this is, that
9 you -- in this particular case, after a person has --
10 a crime has been enforced, the person has completed their
11 penalty, then there is -- these people happen to fall
12 into a category now that they have a requirement to
13 register. And if they don't register, it then becomes a
14 crime. But the registration part is obviously not a
15 crime; just as it is not a crime to register for the
16 draft, but the failure to do so is.

17 So I think that is the key point that we're
18 dealing with on this particular part and this particular
19 time, is whether or not this falls under the disclaimer
20 in the Constitution and in all the previous statutes
21 related to mandated costs and related to the enforcement
22 of crime. And I think it's pretty clear that from the
23 cases and the description and some of the other mandates
24 and things that have been approved by this Commission in
25 the past, that this has really nothing to do with the

1 enforcement of that crime. This is a whole separate
2 process that was added on later as a good public policy
3 for the citizens to make sure that another crime may not
4 take place or that people are aware of the possibility
5 that they may be associating with somebody who was a sex
6 offender.

7 And at that point, I think, that was a decision
8 of the Legislature, to say that that is a policy that we
9 want to enforce in the State of California, as well as
10 there are some federal requirements related to this.

11 So I think that's a point that we have to get
12 back to. I think John -- or Lieutenant Steely did an
13 excellent job of talking about the complexity that this
14 statute brought to the whole registration process.

15 It used to be a very simple process. Somebody
16 would come in, essentially prevent -- and give their
17 identification, give their name and address and
18 registration was pretty much done. And that's, you know,
19 all that was to be done at that time.

20 And since then, now, we have made this a very
21 substantial high-profile, high policy within the State of
22 California.

23 Thank you.

24 CHAIR PORINI: All right.

25 Questions? Ms. Steinmeier?

1 MEMBER STEINMEIER: I'd like to get our staff to
2 comment on especially that last one.

3 CHAIR PORINI: Kathy or Camille?

4 MS. LYNCH: Sure. I guess the point that I have
5 to go back to here is, if you read the analysis, it was
6 very long and it is a very complex statute. It involves
7 a lot of activities. And I think for the most part, the
8 claimant agrees with me on the majority of them.

9 Focusing on this, this is on subdivision (a)
10 which tells certain individuals if you're convicted of --
11 I think it's a handful of new crimes -- kidnapping,
12 et cetera, et cetera -- you now have to register.

13 MEMBER STEINMEIER: Yes.

14 MS. LYNCH: Before that, they didn't have to
15 register. If they don't register now, then it's a crime,
16 and they're guilty of a misdemeanor, felony or a
17 continuing offense. That is the extent of the analysis
18 for that.

19 I don't quite understand how this has gone into
20 other enforcement issues which are handled in the rest of
21 the test claim; and frankly, I think I've recommended
22 reimbursement for.

23 So to explain, to staff, that's the limited
24 focus. It's the clerical limited function of that area.

25 CHAIR PORINI: All right, Camille, did you have

1 a comment?

2 MS. SHELTON: Yes, just to add, the claimants'
3 interpretation of 175526(g) today is different than the
4 Commission's interpretation of that section historically.
5 That section has been interpreted -- for those of you who
6 remember, in "Three Strikes" and in "Batterer's Treatment
7 Program."

8 And the claimants are relying on the last
9 provision of 175526(g), which states that, "For that
10 portion of the statute relating directly to the
11 enforcement of the crime or infraction." In both of
12 those Statements of Decision, the Commission determined,
13 based on statutory interpretation and the Court's
14 discussion of statutory interpretation, that that phrase
15 only relates back to the section before, which says that
16 a statute changed the penalty for a new crime or
17 infraction. And that's not the case.

18 That last provision of 17556(g) does not relate
19 to a situation where the statute creates a new crime or
20 infraction.

21 So historically, the Commission has not used the
22 enforcement part when the statute creates a new crime or
23 infraction. So the claimant's interpretation would be
24 different from what the Commission has historically done
25 with regard to that provision.

1 CHAIR PORINI: Okay. Other questions from
2 Members?

3 All right, Mr. ^{Lombard}~~Lombard~~? Mr. Lutzenberger?

4 MR. LUTZENBERGER: Thank you Madam Chair,
5 Commission Members.

6 We are in agreement with the staff analysis,
7 except with the points that we raised in our July 2001
8 submittal.

9 Our disagreement with the Commission staff
10 analysis is largely in three areas:

11 That is, the high-risk sex offenders,
12 particularly the local statistical information that,
13 according to the analysis, is required to be sent to the
14 DOJ.

15 The disclosure of information to the public or
16 community notice, we're in disagreement with the reason
17 why it is not a state-reimbursable state cost mandate.
18 We agree that it is not a mandate, but the reasoning, we
19 have disagreement with.

20 We also believe that distribution of the CD-ROM
21 does not exceed the federal mandate because it is likely
22 the least-costly method of distributing such information.

23 Now, with the first point: Regarding high-risk
24 sex offenders and also the second point, disclosure of
25 the information to the public, the staff analysis

1 indicates, based on case law in TC-19 of their staff
2 analysis, that in some instances, the word "may" really
3 means "shall," or is peremptory.

4 On page TC-19, the staff analysis states,
5 "Although it is a well-settled principle in the statutory
6 construction that the word 'may' is ordinarily construed
7 as permissive and 'shall' is ordinarily construed as
8 mandatory, there are situations in which the word 'may'
9 is interpreted to mean 'shall.'"

10 And they cite a Supreme Court case, Common Cause
11 of California vs. Board of Supervisors of L.A. County.

12 Now, we also looked to that case and other
13 relevant case law. And the Supreme Court clarified, in
14 the case of Common Cause, looking back at the also-cited
15 case on TC-19, Los Angeles County vs. State, the
16 presumption is correct, particularly when used in the
17 same statute. This end clause is not included in the
18 staff analysis.

19 The Court goes further to indicate that in
20 California Correctional Peace Officers Association vs.
21 State Personnel Board, the same presumption is in place.
22 They indicate an exception when the point of "may" or
23 "shall" is not expressed, then the Court looks to the
24 legislative intent and other areas of what the statute
25 embodies, to determine whether a clause using the word

1 "may" actually is peremptory.

2 Therefore, on this basis, we do not agree that
3 this legislation imposes a reimbursable mandate for
4 high-risk sex offenders and disclosure of the statistical
5 information and the disclosure of information to the
6 public because we believe that the word "may" is
7 expressed within the statute and is differentiated from
8 the word "shall," based on the Supreme Court's decisions.

9 The Commission's staff analysis have also
10 utilized the same argument, "may" being mandatory,
11 parens, relating to community notification under federal
12 law.

13 We do not believe that this argument is
14 appropriate for this application, either.

15 On the third point, regarding the CD-ROM
16 distribution and exceeding the federal mandate, based on
17 what the state law requires under this test claim, the
18 Commission staff analysis indicates the relevant
19 information to be released under federal law does not
20 require the CD-ROM format and exceeds the federal
21 mandate. We believe that given the current state of
22 technology, this is the most cost-effective means of
23 distributing this information to the public under the
24 federal law, which requires that the relevant information
25 be provided to the public. Therefore, it does not exceed

1 the federal mandate, in our opinion, and no reimbursement
2 would be required.

3 In summary, we do not concur with the staff
4 analysis on these points and would urge the Commission to
5 modify the final staff analysis to address these
6 concerns.

7 CHAIR PORINI: All right. Comments from staff
8 or questions?

9 All right, Kathy?

10 MS. LYNCH: I'll just address two points very
11 quickly, because I think they've been addressed in the
12 test claim. But regarding the "may-shall" issue -- and I
13 think this was brought up by Lieutenant Steely -- they
14 don't have a choice. If there's a sex offender out there
15 and living next door to a preschool, the police
16 department, they're going to have to go tell them.
17 That's exactly why you've got the Supreme Court case.

18 When police officers are protecting the public,
19 it's not a "may," it's a "shall." Especially, I think
20 with this -- and if you remember the case with the young
21 girl that was raped and murdered -- Megan, I forget her
22 last name -- it just falls right into that. So I think
23 the "may" is clearly a "shall" in this case, and there is
24 a Supreme Court case to support that.

25 As far as the federal issue, that's on TC-28.

1 And I actually quoted the provision. If you look at the
2 little table, it doesn't say that they have to do this by
3 CD-ROM. That is something the State of California has
4 decided to do. I imagine there are other states that do
5 something else. I'm not sure of that, but I don't know
6 if everybody has decided to use CD-ROMs. So the CD-ROM,
7 I think, goes beyond the federal statute.

8 CHAIR PORINI: Yes, Mr. Lombard?

9 MR. LOMBARD: Madam Chair, if I could comment on
10 that.

11 We don't know what method of distributing that
12 information the federal government was requiring, and we
13 do not believe that a CD-ROM, to administer this program,
14 is unreasonable. We don't believe that it would be any
15 less costly for them to submit this information in a
16 paper form to the law enforcement officers.

17 So given no other method of distributing this,
18 we believe that's the most effective means.

19 CHAIR PORINI: Ms. Stone?

20 MS. STONE: Thank you very much, Madam Chairman.

21 The federal statute, 14071(e), states that,
22 "The state or any agency authorized shall release
23 relevant information that is necessary to protect the
24 public."

25 The State of California has a 900 number that

1 individuals can call. It is also possible or conceivable
2 that the state could have created a Web site for
3 individuals to go to, without requiring the information
4 concerning who is accessing the registration information
5 be recorded.

6 Also, the individuals who view the CD-ROM cannot
7 be convicted sex offenders themselves. So sex offenders
8 can't find out where other sex offenders are living.

9 So there are a number of other methodologies by
10 which this information could be made available to the
11 public that would not require the participation of local
12 law enforcement.

13 I personally think it's a good thing that local
14 law enforcement is involved because it is serving the
15 public interest, which is to protect children. And
16 especially some of the situations mentioned by
17 Lieutenant Steely, I, as a member of the public, feel
18 grateful that there are individuals looking out for the
19 benefit of our children.

20 But this is just a requirement that exceeds the
21 federal standard.

22 CHAIR PORINI: All right, any other questions
23 from Members or comments?

24 I think I was taken by Lieutenant Steely's
25 description of all of the multi-tasking sorts of things

1 that can be done with the CD-ROM. It sounded, from your
2 description, that you can print posters, you can do a
3 variety of different things with the information there.

4 MR. STEELY: Yes, ma'am.

5 MR. BURDICK: Madam Chair, one comment, if this
6 is getting near the end of the discussion. One issue
7 that was not raised, before action is taken, that needs
8 to, I think -- what was omitted from the discussion, is
9 the annual registration.

10 In the staff analysis and recommendation of the
11 items that they believe to be reimbursable -- and I don't
12 think -- and I have to apologize, I read it last night
13 again --

14 MS. STONE: Page 16. 16.

15 MR. BURDICK: Where you discussed it, but did
16 they respond to it?

17 MS. STONE: Uh-uh.

18 MR. BURDICK: We raised the issue on page 16 --

19 MS. STONE: 84, 84.

20 MR. BURDICK: I'm sorry, 84.

21 MS. STONE: Sorry, wrong page.

22 MR. BURDICK: I was going to say, I know we
23 raised the issue but I did not -- with specifically
24 referencing, I didn't see any response by staff to the
25 annual registration which Lieutenant Steely mentioned as

1 a reimbursable activity. And so I just wanted to make
2 sure that as part of this discussion, that that would not
3 be something that if a mandate was found, would be
4 precluded from being included in the Parameters and
5 Guidelines, or at least a discussion of that to be
6 brought back to the Commission for their consideration,
7 because that issue somehow has not been focused on in
8 this particular staff analysis to the Members.

9 CHAIR PORINI: All right, Ms. Lynch, did you
10 wish to comment?

11 MS. LYNCH: I will, when I find it.

12 CHAIR PORINI: Okay.

13 MS. LYNCH: I'm sorry.

14 MR. BURDICK: And I apologize for that.

15 MS. LYNCH: When you say 84 is --

16 MS. STONE: It's in the test claim.

17 MS. LYNCH: It's in the test claim?

18 MS. STONE: Yes.

19 MR. BURDICK: There's a little paper here to
20 deal with.

21 CHAIR PORINI: Yes, I know.

22 MEMBER HALSEY: I have a question.

23 CHAIR PORINI: All right, Ms. Halsey?

24 MEMBER HALSEY: This is relating to your last
25 point. So are you claiming then reimbursement for

1 registration after the first ten years?

2 MR. BURDICK: What we're saying is, that amongst
3 the activities that were listed by the staff in their
4 analysis, of those things that they believe to be
5 reimbursable, which we would agree with those items, we
6 would say that in addition to that, we argue that the
7 annual registration, that the person has to come back
8 annually now and register, that that should be included
9 as one of the reimbursable items.

10 And whether they want to discuss that today or
11 to make it clear to staff that that can be an item to be
12 discussed at the Parameters-and-Guidelines session and
13 brought back, if it raises any questions, I just did not
14 want it to be precluded from being at least an item of
15 discussion at the Parameters-and-Guidelines stage.

16 MS. LYNCH: I have a question.

17 CHAIR PORINI: All right.

18 Did you find it?

19 MS. LYNCH: I think so but I will venture out to
20 respond without looking at it too closely.

21 And maybe, Camille, if she can help me on this
22 one.

23 Haven't they always been required to register
24 annually? So how is this a new program or higher level
25 of service?

1 MR. BURDICK: And, again, what this would be,
2 would be the additional requirements.

3 You know, previously, the annual registration --
4 and I'll ask Lieutenant Steely to comment on this, what
5 the requirements are versus, you know, very generally
6 previously and what the requirements are now.

7 MR. STEELY: Previously, all we had was their
8 business, their name, aliases and their address, with no
9 proof of address. And this file was kept on a
10 three-by-five card with all the information on it. And
11 that's the end of it. And, plus, none of that
12 information was releaseable.

13 Since that time, as the forms we sent around
14 will show you, the extensive information that the
15 clerical staff has to gain is: Vehicle license, vehicles
16 they may be driving, aliases, their full address, with
17 proof of their address. They also have to do the --
18 we have to do the complete notification of when they
19 have to register, which was not required before. We have
20 to -- they have to fill out -- and they have to initial
21 each one of those sections, warning them of what's going
22 to happen to them if they don't register, advising them
23 of what happens if they move.

24 Also, prior to that, we did not have the 90-day
25 on a transient registration. They could register within

1 ten days. And that was within ten days, either before or
2 after. Now it's five days.

3 We still had to enter it into the CLETS system,
4 through the State, on the computer system; but it was
5 more -- a lot more extensive now because it does have the
6 vehicles, it does have their place of -- by the way,
7 their place of work has to also -- at that address, it
8 has to have an address on it. And if demanded, they have
9 to show that they do work there.

10 CHAIR PORINI: All right.

11 MS. LYNCH: I think if you go to TC-16, Contents
12 of Registration upon Release; to the extent that they're
13 requiring additional information regarding employment,
14 vehicle information, that was determined to be any
15 program or higher level of service.

16 As far as some of the other issues, I think
17 they're all addressed under the individual bullets.
18 And if we want to go to each one, we could discuss it.
19 But if it was previously then they had to do it, then the
20 conclusion is, it's not new. If they didn't have to do
21 it previously, then it was provided for.

22 I don't know if that helps, Allan, answer your
23 question.

24 MR. BURDICK: Yes.

25 MS. LYNCH: But we may have to do more refining

1 on the P's and G's.

2 MR. BURDICK: I just wanted to make sure
3 I was clear on this because sometimes we get into --
4 if a mandate is found and we get to the
5 Parameters-and-Guidelines stage, then that question
6 comes up. And I just wanted to make sure it wasn't --
7 in reading it last night, it wasn't clear to me that if
8 the Members adopted this, that staff would agree that
9 those additional new requirements beyond that of the
10 annual registration would be required. But it did seem
11 to be consistent with the staff analysis.

12 CHAIR PORINI: Camille, did you have a comment?

13 MS. SHELTON: Well, just to say that the only
14 activities that are new, are the ones that are listed on
15 page TC-5, under the conclusion to Part 2. The
16 P's and G's would be limited to those activities and then
17 anything that's reasonably necessary to comply with those
18 activities.

19 CHAIR PORINI: All right, Ms. Stone?

20 MS. STONE: The reason why we were concerned,
21 Madam Chairman, is that the issue of Contents of
22 Registration upon Release, we agree that those particular
23 issues are a new higher level of service.

24 The issue is, it's unclear from the heading
25 whether this applies to just the preregistration or the

1 annual residential registration requirements.

2 We have no question that the preexisting
3 requirement of name and address was -- you know, has been
4 required since 1945. What we are concerned about now are
5 the things like the photograph and verification and the
6 thumbprint annually, those types of things, which never
7 had to be obtained previously, and who knows what other
8 kinds of issues will arise in the future.

9 So if this particular -- the contents of
10 registration upon release apply to the annual
11 registration, then we have no quibbles.

12 CHAIR PORINI: All right, Ms. Steinmeier, did
13 you have a comment?

14 MEMBER STEINMEIER: Yes, to me, clearly this is
15 a P's-and-G's issue. Mr. Burdick does well, though, to
16 put it into the record that he wants to make sure that
17 that's there.

18 But since specifically the test claim
19 legislation doesn't mention annual reporting, it mentions
20 the kind of reporting, I think it's a P's-and-G's issue.

21 CHAIR PORINI: All right, Camille?

22 MS. SHELTON: It can be addressed as a
23 P's-and-G's issue, based on how Pam just phrased it, if
24 she's relating that back to their activity, then we can
25 address it there.

1 CHAIR PORINI: Okay. Further comments?

2 VICE CHAIR SHERWOOD: May I just --

3 CHAIR PORINI: Yes, Mr. Sherwood, Mr. Harrigan
4 and then Mr. Beltrami.

5 VICE CHAIR SHERWOOD: So you are clarifying that
6 then, that this would apply to the annual registration?

7 MS. SHELTON: No, I'm saying that we can analyze
8 it further for P's and G's.

9 VICE CHAIR SHERWOOD: Okay.

10 MS. SHELTON: Because she's relating to an
11 activity that we are recommending reimbursement for.

12 CHAIR PORINI: Okay.

13 VICE CHAIR SHERWOOD: Is that going to be clear
14 enough?

15 MS. LYNCH: I think it's clear.

16 MS. SHELTON: It would be --

17 MS. LYNCH: I wrote it so I may be a little
18 biased on that. But I did break it down into
19 preregistration, and specifically followed the code
20 sections, if you were to match this up. And I know it's
21 a long code section; it's like 30 pages.

22 MS. STONE: Right.

23 MS. LYNCH: It does match right on up. So I
24 think it is clear.

25 I can understand Pam's concern, though, but I

1 think it can be addressed in the P's and G's.

2 MS. STONE: Okay.

3 VICE CHAIR SHERWOOD: So staff does feel that
4 it's clear enough then?

5 MS. SHELTON: Yes, but also remember for
6 Parameters and Guidelines, we normally list -- the
7 regulations require that we list one-time activities and
8 on-going activities. So this would be addressed in that
9 issue.

10 VICE CHAIR SHERWOOD: Okay.

11 CHAIR PORINI: Okay, Mr. Harrigan?

12 MEMBER HARRIGAN: Just a point of clarification,
13 on TC-3, when I compare it with the staff's analysis on
14 activities -- and this is really a question for both
15 Ms. Stone and also for staff -- that we have nine
16 different activities. And when you compare that to then
17 staff's recommendation on TC-5, it appears the only thing
18 that's really fallen out there is community notification.

19 I mean, is everybody in agreement that that's
20 the only difference here, from the activities?

21 CHAIR PORINI: Ms. Stone?

22 MS. LYNCH: That's how I saw it.

23 MS. STONE: I see it that the only issue on
24 community notification is really subsumed in the
25 high-risk sex offenders, just a portion of it. That when

1 you're dealing with a high-risk sex offender, such as
2 Lieutenant Steely was saying, who was moved in next to a
3 school or is working on a school premises and is running
4 Little League and Boy Scouts and is a pedophile, then,
5 yes, there is a requirement for notification. But that's
6 the only place I'd see it.

7 MEMBER HARRIGAN: Okay.

8 MS. STONE: Does that -- I don't know if staff
9 sees it that way.

10 MEMBER HARRIGAN: I want to make sure that we're
11 all tracking together on this.

12 MS. STONE: On the same page.

13 MEMBER HARRIGAN: Yes, at least as far as the
14 activities are concerned.

15 MS. STONE: Yes.

16 CHAIR PORINI: All right. Mr. Lutzenberger?

17 MR. LUTZENBERGER: For the record, we agree that
18 it falls out, that is not a mandate. But, again, we
19 reiterate, we do not agree with the logic as to why,
20 based on the "may-shall" principle stated in the staff
21 analysis.

22 We disagree based upon the argument that there
23 is relevant case law that has not been cited in this
24 analysis.

25 We do agree that it is not a mandate because the

1 federal government put this forth based on the argument
2 that the State of California would lose significant
3 funding for HIV research and testing if this federal
4 mandate was not followed through at the state level.
5 On that basis, we agree that the community notification
6 falls out.

7 CHAIR PORINI: Okay.

8 Mr. Beltrami?

9 MEMBER BELTRAMI: On your comments,
10 Mr. Lutzenberger, you think ten percent reduction is a
11 substantial budget cut?

12 MR. LUTZENBERGER: On the basis of 5 million
13 dollars, as quoted in the staff analysis, that is
14 significant money for that program.

15 MEMBER BELTRAMI: Really? The state budget must
16 be in worse shape than I thought.

17 CHAIR PORINI: I can assure you, it won't be
18 pretty next year.

19 MR. LUTZENBERGER: I cannot comment on the state
20 budget process, on the basis of opinion.

21 MEMBER BELTRAMI: Do you really feel that local
22 police agencies are not required to report these things?
23 That it's a "may" situation?

24 MR. LUTZENBERGER: From what the Supreme Court
25 has stated in the cases that we have looked at --

1 MEMBER BELTRAMI: I understand what the Supreme
2 Court has said in that case. But in this instance, do
3 you really think a police agency can decide not to report
4 something to the DOJ?

5 MR. LUTZENBERGER: In this instance, I believe
6 that it would be based on more of the sense of probable
7 cause of a crime to be possibly committed or about to be
8 committed, and that becomes law enforcement and the
9 local -- fundamental local responsibility.

10 MEMBER BELTRAMI: Madam Chair, may I?

11 CHAIR PORINI: Mr. Beltrami.

12 MEMBER BELTRAMI: Lieutenant Steely, when these
13 folks are released from state facilities, do they
14 normally return to the county of origin or --

15 MR. STEELY: Yes, unless there's likelihood that
16 the parole agent -- the likelihood that they would
17 continue in the crime, they then can put them in another
18 area.

19 But usually, yes, they do return to the county
20 of origin.

21 MEMBER BELTRAMI: I seem to remember an instance
22 when I was with the State, where someone from an urban
23 area was released with a lot of publicity and ended up, I
24 think, in Siskiyou or Modoc or something, which did not
25 please the people in Modoc.

1 MR. STEELY: They do move around and they don't
2 tell the people. We get a lot of people that are
3 released to us that are from the L.A. area, and because
4 there's a less likelihood that they'll recommit their
5 crime, they release them in our area. So, yes, we do get
6 them.

7 MEMBER BELTRAMI: Okay. I notice that on TC-30,
8 it refers to the test claim legislation having a sunset
9 provision.

10 What does that mean, Kathy?

11 MS. LYNCH: When you look at the code sections,
12 it does have a provision that says "This test claim
13 legislation contains a sunset provision where it's only
14 operative until January 1st, 2004."

15 I assume that will continue, but that requires
16 some legislative action.

17 If someone else can add to that, I'm not --

18 MEMBER BELTRAMI: I'm just curious why.

19 Mr. Burdick --

20 MS. LYNCH: I don't know why they put that date
21 in there.

22 MEMBER BELTRAMI: Yes, is our historian here?

23 CHAIR PORINI: Ms. Stone? Mr. Burdick?

24 MR. BURDICK: Commissioner Beltrami, I think it
25 was essentially an effort, because I know that this was

1 probably going to be a somewhat expensive program for
2 both the state and local governments to do that, you
3 know, they put the sunset in to see whether or not --
4 to force them to come back and reexamine the program,
5 to make a determination as to whether or not this was an
6 effective program and whether it was actually doing what
7 it was intended to do.

8 So that's usually the purpose of putting sunsets
9 is to force the Legislature to reexamine -- and the
10 committee staff, whatever -- will go through another
11 hearing to look at it and say, "Is this program carrying
12 out the function it was intended to do? Should we
13 continue it or should we amend it?"

14 And I think because it was such an expansive
15 program and it was very controversial, that, you know,
16 that was the reason for the -- the probable reason for
17 adding the sunset.

18 MEMBER BELTRAMI: Hopefully, we won't go to
19 tattooing next year.

20 MEMBER STEINMEIER: Big A's?

21 CHAIR PORINI: Other questions or comments from
22 Members?

23 MEMBER HALSEY: I'd like to make a motion.

24 CHAIR PORINI: All right, Ms. Halsey?

25 MEMBER HALSEY: I agree with staff's analysis,

1 except for with regard to the CD-ROM. It seems to me
2 that that is actually probably the least-costly means of
3 providing that information, and also can serve multiple
4 purposes for the police and sheriffs. And so I would
5 move to adopt the staff's analysis, just subtracting the
6 CD-ROM from the reimbursable costs.

7 CHAIR PORINI: All right, we have a motion.

8 Do I have a second?

9 MS. SHELTON: Can I clarify?

10 CHAIR PORINI: Yes, please, Camille.

11 MS. SHELTON: The motion on the CD-ROM, is that
12 based on the arguments raised by the Department of
13 Finance?

14 MEMBER HALSEY: Yes.

15 MS. SHELTON: Okay.

16 CHAIR PORINI: All right, is there a second with
17 regard to that?

18 I'll go ahead and second that.

19 So we have a motion and a second.

20 May I have roll call? Or is there any further
21 discussion?

22 Ms. Steinmeier?

23 MEMBER STEINMEIER: Ms. Halsey, there are lots
24 of way to do notification. And Ms. Stone mentioned there
25 were other ways to do it. And the local law enforcement

1 doesn't have to do it at all. The federal government
2 said it has to be done. So they could have maintained it
3 at the state level. They didn't have to force local
4 agencies to deal with the information specifically.
5 So I don't agree with the Department of Finance or your
6 analysis, and I'll be voting "no," that the CD-ROM ought
7 to stay in.

8 CHAIR PORINI: All right.

9 MS. HIGASHI: Are we ready?

10 Ms. Halsey?

11 MEMBER HALSEY: Are we voting?

12 MS. HIGASHI: Yes.

13 MEMBER HALSEY: Aye.

14 MS. HIGASHI: Mr. Harrigan?

15 MEMBER HARRIGAN: No.

16 MS. HIGASHI: Mr. Sherwood?

17 VICE CHAIR SHERWOOD: No.

18 MS. HIGASHI: Ms. Steinmeier?

19 MEMBER STEINMEIER: No.

20 MS. HIGASHI: Mr. Beltrami?

21 MEMBER BELTRAMI: No.

22 MS. HIGASHI: Ms. Porini?

23 CHAIR PORINI: Yes.

24 MS. HIGASHI: Is there another motion?

25 CHAIR PORINI: All right. Another motion?

1 MEMBER STEINMEIER: I'll move the staff
2 analysis.

3 MEMBER BELTRAMI: Second.

4 CHAIR PORINI: All right. Ms. Steinmeier moves
5 and Mr. Beltrami seconds the staff analysis.

6 Is there further discussion?

7 All right, roll call, please.

8 MS. HIGASHI: Mr. Harrigan?

9 MEMBER HARRIGAN: Yes.

10 MS. HIGASHI: Mr. Sherwood?

11 VICE CHAIR SHERWOOD: Yes.

12 MS. HIGASHI: Ms. Steinmeier?

13 MEMBER STEINMEIER: Aye.

14 MS. HIGASHI: Mr. Beltrami?

15 MEMBER BELTRAMI: Yes.

16 MS. HIGASHI: Ms. Halsey?

17 MEMBER HALSEY: No.

18 MS. HIGASHI: Ms. Porini?

19 CHAIR PORINI: No.

20 MS. HIGASHI: Staff analysis is approved.

21 MS. STONE: Thank you very much.

22 CHAIR PORINI: All right, shall we take a
23 five-minute break?

24 (A recess was taken from 10:37 a.m. to 10:49 a.m.)

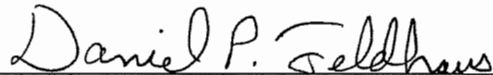
25 CHAIR PORINI: All right, we'll come back from

REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were reported by me at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings, nor in any way interested in the outcome of the cause named in said matter.

In witness whereof, I have hereunto set my hand this 1st day of August 2001.



DANIEL P. FELDHAUS
CSR #6949, RDR, CRR

MINUTES
COMMISSION ON STATE MANDATES

State Capitol, Room 437
Sacramento, California
July 26, 2001

Present: Chairperson Annette Porini
Representative of the Director of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Heather Halsey
Representative of the Director of the Office of Planning and Research
Member John Harrigan
Representative of the State Controller
Member Albert Beltrami
Public Member
Member Joann Steinmeier
School Board Member

Absent: Member John Lazar
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Porini called the meeting to order at 9:33 a.m.

APPROVAL OF MINUTES

Item 1 June 28, 2001

Upon motion by Member Harrigan and second by Member Steinmeier, the minutes were adopted. Member Halsey abstained.

PROPOSED CONSENT CALENDAR

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

PROPOSED STATEMENT OF DECISION – TEST CLAIM

Item 5 *Cal-Voter Program* – 98-TC-15
County of Tehama, Claimant
Elections Code Section 2168
Statutes of 1995, Chapter 913

Member Sherwood moved for adoption of the consent calendar. With a second by Member Harrigan, the consent calendar was unanimously adopted.

**HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7**

TEST CLAIMS

- Item 2 *Sex Offenders: Disclosure by Law Enforcement Officers*, CSM 97-TC-15
County of Tuolumne, Claimant
Penal Code Sections 290 and 290.4
Statutes of 1996, Chapters 908 and 909
Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821 and 822
Statutes of 1998, Chapters 485, 550, 927, 928, 929 and 930

Kathy Lynch, Staff Counsel, introduced this item. She noted that the test claim legislation requires the registration of certain convicted sex offenders and public disclosure of their identity by local law enforcement agencies. Staff found that the requirement for sex offenders to register for new crimes or within the prescribed time period for specific crimes, or they will be guilty of a misdemeanor, felony, and/or continuing offense, creates a new crime and is therefore not reimbursable. Staff further found that the remaining activities in the test claim legislation, as listed in staff's analysis, impose a new program or higher level of service.

Parties were represented as follows: Pamela Stone and John Steely, representing the County of Tuolumne; Allan Burdick, representing the California State Association of Counties; and Jim Lombard and Tom Lutzenberger, representing the Department of Finance.

Ms. Stone disagreed with staff that the registration for new crimes and time lines represents a new crime that is not eligible for reimbursement under Government Code section 17556, subdivision (g) because the registration does not pertain to the actual enforcement of a new crime or infraction. She argued that the test claim legislation expanded the universe of individuals subject to registration and substantially increased the information required for registration. Ms. Stone cited *Wright v. Superior Court* and submitted that the statute is regulatory in nature and intended to pursue the State's interest in controlling crime and preventing recidivism and was not intended to constitute punishment. She compared this requirement to registration for selective service. Ms. Stone introduced into the record a packet of registration materials from the Tuolumne County Sheriff's Department (see pages 19-21 of the July 26, 2001 Commission hearing transcript for a description of the materials included in the packet.)

Lieutenant Steely explained the impact of the test claim legislation on the Tuolumne County Sheriff's Department. He submitted that both registration and enforcement activities have increased in complexity. For example, the time period for offenders to register was shortened, all offenders within the jurisdiction had to be notified of the change in law, the new classification of registrants expanded the number of registered offenders, the offenders all become subject to the public release of their information to people at risk, and the number of requests for viewing the public information on CD-ROM significantly increased, as did the efforts to notify victims or potential victims in the field.

registering for selective service and argued that registering is not the crime, but the failure to do so is. He submitted that this registration process was added on as a good public policy.

Ms. Lynch explained that individuals convicted of certain crimes that did not have to register under prior law now must register or they are guilty of a crime. She added that staff's focus on the registration issue was limited to clerical functions and that staff had actually recommended reimbursement for other enforcement issues.

Camille Shelton, Staff Counsel, added that, in Statements of Decision for *Three Strikes* and *Batterer's Treatment Program*, the Commission determined, based on statutory interpretation and the Court's discussion of statutory interpretation, that the phrase cited by the claimant in Government Code section 17556, subdivision (g), only relates back to the subdivision before, which says that a statute changed the penalty for a new crime or infraction. Ms. Shelton contended that is not the case here. She therefore submitted that the claimant's interpretation would be different from what the Commission has historically done with regard to that provision.

Mr. Lutzenberger noted his agreement with staff's analysis, with a few exceptions. Regarding high-risk sex offenders and disclosure of information to the public or community notice, he did not agree with staff's findings that the word "may" meant "shall" in the statute and therefore submitted that these activities are not reimbursable. Further, Mr. Lutzenberger argued that the state requirement for distribution of the information in CD-ROM format does not exceed the federal mandate to distribute the information because this is the most cost-effective means of distribution. He asked the Commission to modify staff's final analysis to address these concerns.

Ms. Lynch submitted that, when police officers are protecting the public, it is a "may," not a "shall." For instance, if a sex offender lives next door to a preschool, the police department must notify the preschool—there is no choice. Regarding distribution, Ms. Lynch contended that the federal law does not require distribution by CD-ROM, so the state's imposition of such a requirement goes beyond the federal statute.

Mr. Lombard argued that the CD-ROM method of distribution was the most cost effective. Ms. Stone countered that there are a number of other methodologies by which this information could be made available to the public that would not require the participation of local law enforcement and therefore it does exceed the federal standard.

Chairperson Porini commented that she was taken by the multi-tasking that can be accomplished with the CD-ROM. Lieutenant Steely agreed.

Mr. Burdick raised a final issue regarding reimbursement for annual registration, stating his concern that this issue was not addressed in the staff analysis. He asked if it was intended to be addressed in the parameters and guidelines (Ps&Gs) phase.

Member Halsey asked for clarification, and Mr. Burdick responded that the annual registration of sex offenders should be reimbursable. Lieutenant Steeley responded that previously, they were only required to provide their name, business, aliases, and address, and that information was not releasable. Now registration requires vehicle license, description of vehicles they may be driving, a full address, and proof of that address. The department also has to notify of annual registration, which it did not have to do before. Also, offenders now must register within five days rather than ten.

Ms. Lynch responded that the staff analysis indicates that, to the extent additional information is required, it is a new program or higher level of service. But the language may need refining during the Ps&Gs phase.

Mr. Burdick stated that he just wanted to be clear on the issue.

Ms. Shelton clarified the activities that were new. Member Steinmeier stated that it was clear to her that this was a Ps&Gs issue. Ms. Shelton reiterated that it can be addressed during the Ps&Gs phase. Member Sherwood asked if everyone was clear on this issue. Ms. Lynch responded that she was clear. She added that the language in the analysis matched that in the implementing code section.

Member Harrigan asked for technical clarification on the reimbursable activities. Ms. Stone responded that claimant was in agreement with the staff analysis. Mr. Lutzenberger added that, while the DOF agrees with staff's recommendation, they do not agree with the "may-shall" argument in the staff analysis.

Member Beltrami asked DOF if they believed a local police agency could decide not to report the information to DOJ. Mr. Lutzenberger responded that in this instance, it is the fundamental responsibility of the local police agency.

Member Beltrami asked Lieutenant Steele if parolees are returned to the county of origin when they are released from prison. Lieutenant Steele said they are, unless there is the likelihood that the parolee would continue the crime in the original county. Finally, Mr. Beltrami asked for technical clarification on the sunset date in the implementing statutes. Mr. Burdick provided that clarification.

Member Halsey made a motion to approve the staff analysis, minus the language regarding the CD-ROM. With a second by Chairperson Porini, the motion failed 2-4. Members Beltrami, Harrigan, Sherwood, and Steinmeier voted "No."

Member Steinmeier moved for adoption of the staff analysis. With a second by Member Beltrami, the motion carried 4-2. Members Halsey and Porini voted "No."

INCORRECT REDUCTION CLAIMS

- Item 3 *Graduation Requirements*, - 4435-I-13 & 4435-I-39
Castro Valley Unified School District
Education Code Section 51225.3
Statutes of 1983, Chapter 498

Cathy Cruz of the Commission staff introduced this item. She noted that the claimant incorporated by reference the same arguments raised in the San Diego Unified School District's incorrect reduction claim (IRC), which the Commission denied on September 28, 2000. Ms. Cruz added that the State Controller's Office (SCO) asserted that it adjusted the claims based on the Commission's parameters and guidelines. The Department of Finance supported the SCO.

Ms. Cruz recommended the Commission deny this IRC for the following reasons:

- The SCO did exercise its audit authority in accordance with state law;
- The Commission does not have specific or implied authority to determine if the SCO established a standard of general application without the benefits of law or the due process of rulemaking;
- The SCO did perform the reductions in accordance with the claiming instructions and the parameters and guidelines;
- The SCO's payment of 38 other claims has no bearing on this Incorrect Reduction Claim; and
- The SCO does not have the burden of proof to demonstrate that the claimant is eligible for reimbursement.

Parties were represented as follows: Page O'Connor, representing Castro Valley Unified School District; Carol Leach and Ginny Brummels, representing the SCO; and Jeanie Oropeza and Mohammed Wardak, representing the Department of Finance.

Ms. O'Connor stated that the claimant's disagreements with all of staff's findings have been previously addressed in written submissions for this and other *Graduation Requirements* IRCs.

Ms. Leach noted that the SCO was in complete agreement with staff's analysis. Mr. Wardak indicated that the Department of Finance also concurred with staff's analysis.

Member Beltrami asked Ms. Leach if the SCO's claiming instructions specifically advised school districts to outline the possibility of staff reductions. Ms. Leach thought that at some point they were asked to specifically outline the possibility. Member Beltrami asked if the SCO would have been satisfied if a district reported that it had looked at the possibility and found no place to make a reduction. Ms. Brummels replied that it would have been taken into consideration if the district provided documentation supporting that there were no offsetting savings.

Member Sherwood moved for approval of staff's recommendation. With a second by Member Beltrami, the motion carried unanimously.

POSTPONED

PROPOSED STATEMENT OF DECISION – TEST CLAIM

- Item 4 *Comprehensive School Safety Plans*, 98-TC-01 and 99-TC-10
Kern High School District, Claimant
Education Code Sections 35294.1, 35294.2, 35294.6 and 35294.8
Statutes of 1997, Chapter 736, Statutes of 1999, Chapter 996

Item 4 was postponed at the request of the claimants.

**INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8**

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

Item 6 *County Treasury Oversight Committees - 96-365-03*
County of San Bernardino, Claimant
Government Code Sections 27130 et seq.
Statutes of 1995, Chapter 784; Statutes of 1996, Chapter 156

Sean Avalos, Staff Counsel, presented this item, explaining that there were two issues before the Commission. First, the claimant disagreed with staff modifications to the proposed parameters and guidelines (Ps&Gs) because they did not include reimbursement for the proportional share of costs attributable to involuntary depositors. Mr. Avalos stated that reimbursing counties for the proportional share of costs attributable to involuntary depositors would be inconsistent with the Statement of Decision. He recommended that the Commission deny claimant's proposed language.

Second, Mandated Cost Systems requested that the Commission include school districts as eligible claimants in these proposed Ps&Gs. Mr. Avalos stated that this request exceeds the scope of this test claim and Statement of Decision, and therefore, recommended that the Commission deny this request. He recommended that the Commission adopt the claimant's revised Ps&Gs, as modified by staff.

Parties were represented as follows: Allan Burdick, representing the California State Association of Counties; Leonard Kaye, representing the County of Los Angeles; Marcia Faulkner, representing the County of San Bernardino; Carol Leach and Ginny Brummels, representing the State Controller's Office; Paul Minney, representing Mandated Cost Systems; and Greg Rogers, representing the Department of Finance.

Ms. Faulkner stated that, while staff submitted there were two issues before the Commission, she believed there was five unresolved issues. She began with the most significant issue: direction from Commission members at the test claim hearing. She contended that staff believed the Commissioners carved out an exception to imposing fees on other local agencies, only if the other local agency was a dependent district governed by the county board of supervisors. However, she believed the issue is, and the transcript, minutes, and Statement of Decision show, that the Commission provided direction that voluntary or involuntary entities be addressed at the Ps&Gs stage. Therefore, when she submitted the original Ps&Gs, she provided a definition of voluntary and involuntary depositors. And, when she resubmitted the Ps&Gs a few months later, she listed actual voluntary and involuntary districts. Both times, staff struck the language from the Ps&Gs. Ms. Faulkner then reviewed the test claim hearing transcript; specifically, the discussions of voluntary versus involuntary. She quoted Member Sherwood as stating that the issue of which voluntary or involuntary entities would pay fees should be addressed at the Ps&Gs phase. Ms. Faulkner discussed the difference between voluntary and involuntary districts, and the difference between districts that are self-governed and those that are governed by the county board of supervisors. She then reiterated that she disagreed with the staff recommendation to carve out an exception for districts governed by the board of supervisors.

Ms. Faulkner proceeded to discuss the remaining four issues. First, she agreed with Mr. Minney that schools should be included as eligible claimants. Second, she recommended that ongoing

training for new committee members be reimbursed. Third, she recommended that counties be reimbursed for annual audits conducted on county treasury oversight committees, and fourth, she recommended technical cleanup language regarding employee classifications.

Mr. Burdick stated that his only purpose was to support Ms. Faulkner regarding voluntary and involuntary participants in the county treasury pool. He believed that staff's proposed modifications too narrowly constrain the intentions of the Commission.

Mr. Kaye also supported Ms. Faulkner's comments, and recommended language for the annual audit of county treasury oversight committees.

Ms. Leach indicated that the State Controller's Office agreed with the proposed staff modifications, and if, following this hearing, further amendments were necessary, they would comment at that time.

Mr. Minney stated that he requested that school districts be included as eligible claimants, specifically county superintendents attending the meetings of county treasury oversight committees.

Mr. Rogers stated that the Department of Finance concurred with staff's recommendation.

Member Sherwood clarified that staff had completed the work as he had requested, and that Government Code section 17556(d) does impact this issue. He also mentioned an issue, probably not before the Commission at this time, that if costs are passed from the county to an involuntary participant, can that participant come before the Commission and ask for a mandate.

Member Steinmeier asked Member Sherwood if he agreed with the staff analysis. Member Sherwood responded that he did, at this point in time. Member Steinmeier clarified that the members were concerned with considering the issue of voluntary and involuntary depositors; not that it would have any affect, but that the issue was discussed. She stated that she believed staff did analyze the issue. For school districts, Member Steinmeier clarified that they were talking about excess funds. If a school district has excess funds, it can go with the county pool or go somewhere else. In either case, the school district may have to pay management fees—it is part of doing business with investments. Therefore, school districts may not be eligible for reimbursement.

Mr. Minney responded that he was not trying to expand the reimbursable activities section. They would comply with the staff analysis that excludes reimbursement for the fees. He reiterated that he is talking about county superintendent's participation on the committee. Ms. Steinmeier stated that if school districts were eligible, they would probably have to file their own claim. Chairperson Porini asked staff to comment.

Mr. Avalos responded that the original test claim made no mention of school participation in the oversight committee, and those activities were not analyzed during the test claim phase.

Mr. Minney countered that staff's test claim analysis did focus on school districts as it related to fees, but it was probably an oversight when it came to concluding who the eligible claimants were.

Camille Shelton responded that the main concern was the reference to Government Code section 27136, which requires a depositor to file a request to withdraw funds. Counties or schools did not claim that activity, and there is no finding in the statement of decision whether or not it constitutes a new program or higher level of service, and therefore, a school must file a test claim

on that statute. In addition, Ms. Shelton stated that while additional claimants were added in other claims, the language in those claims was more general.

Member Beltrami asked Member Sherwood if he agreed that staff had overlooked the voluntary/involuntary issue in its original analysis. Member Sherwood responded that he would have to look at the minutes, but that he recalled there was indecision whether or not there was an involuntary group within the county pool, and that is why he originally raised the point to look at the issue in more detail during the Ps&Gs phase. Member Beltrami stated that, just like the concerns that were raised over voluntary and involuntary districts, he is concerned that there is now confusion over eligibility for schools.

Mr. Avalos explained that the claim was filed from the county perspective, and cited cities and school districts as eligible for reimbursement. At the test claim hearing, new evidence was produced indicating that there were involuntary depositors that are part of the investment pools. At that point, the representatives suggested dealing with this issue at the Ps&Gs phase. And we did that. Mr. Avalos stated, however, that county superintendent or school district activities were never raised during the test claim phase.

Member Beltrami asked if the statute names individuals who sit on the oversight committee, are each of those individuals required to file a claim, or is it just assumed that whoever sits on the committee is doing the work named in the statute. Mr. Avalos responded that no activities were apparent during the test claim phase.

Ms. Faulkner stated that from her perspective, either the county would be reimbursed for their portion of the costs, or if the county imposed a fee on everyone, those particular local agencies and school districts would be able to seek reimbursement. She stated that she believed the school costs would be minor. She reiterated that if the Commission determined that the county will not be reimbursed for any fees, even the costs for involuntary depositors, then those other agencies should be able to file claims under this mandate. Ms. Faulkner discussed the *San Jose* court case, and the fact that the process had been confusing.

Ms. Shelton agreed that this was a confusing issue, however, the Commission is bound by the Statement of Decision. What the claimants are seeking would change the Statement of Decision, and that is not possible. The time for reconsidering the Statement of Decision has passed. So the proposed Ps&Gs are consistent with the Statement of Decision.

Member Beltrami stated that if Member Sherwood asked that the Ps&Gs address certain issues, shouldn't the Ps&Gs address those issues. Ms. Shelton responded that the staff analysis does address those issues. If the issue is whether the county is allowed to seek reimbursement for fees they could charge to other local agency depositors, the Commission's Statement of Decision already denied it.

Ms. Faulkner noted that the last paragraph of the Statement of Decision concludes that the test claim legislation does not impose a reimbursable mandate for fees assessed by a county treasury oversight committee for local agencies voluntarily placing their funds with the county, and therefore, it opens the door for schools and cities to be reimbursed for the fees that are passed on to them.

Ms. Shelton responded that she interpreted that paragraph from the perspective of the depositors rather than the county, and so we're talking about apples and oranges.

Member Steinmeier asked if it would be inconsistent with the Statement of Decision to add the county superintendent to the list of members of the oversight committee.

Ms. Shelton responded that it would be acceptable to add the county superintendent as a member so they could be reimbursed for committee participation. However, they would have to file a new test claim if they are trying to seek reimbursement for the fees imposed on them.

Member Beltrami stated that it was a shame that the Commission is forced to require these participants to file new test claims.

Chairperson Porini asked for a motion. Member Steinmeier moved the staff analysis with the addition of the participation of county superintendents on the oversight committee.

Mr. Avalos asked if they intended to include the claimant's other requested technical amendments. Member Steinmeier stated that her motion did not include those changes. With a second by Member Sherwood, the motion carried 4-2. Members Beltrami and Halsey voted no.

Mr. Burdick asked if the Commission could request that staff assist claimants in defining what "cause an audit" means. Ms. Shelton stated that this was the first time this issue has been raised. Member Steinmeier stated that it would behoove the Commission for staff to work with the State Controller's Office to come up with a uniform definition in order to prevent incorrect reduction claims. Chairperson Porini asked the SCO if they would work on this issue, and Ms. Brummels responded affirmatively.

EXECUTIVE DIRECTOR'S REPORT

Item 7 Workload, Legislation, Next Agenda

Ms. Higashi noted the following:

- *New Filings.* Thirteen new test claims and two new incorrect reduction claims were filed.
- *Legislation*

Local Claims Bill. SB 348 was amended to appropriate \$89 million for local agencies and allocate \$104 million of funds in the Budget Act for school districts. The bill will be set for hearing when the Legislature returns from recess.

Special Education Settlement Bill. SB 982 has passed the Legislature and is on its way to the Governor's desk.

Mandates Reform Bill. AB 745 is set for hearing in Appropriations Committee on August 20th.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *County of San Bernardino v. State of California, et al.,* Case Number B140704 in the Appellate Court of California, Second Appellate District, Division 2.

2. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number D038027, in the Appellate Court of California, Fourth Appellate District, Division 1.
3. *Department of Finance v. Commission on State Mandates, et al.*, Case Number 00CS01446, in the Superior Court of the State of California, County of Sacramento.
4. *Long Beach Unified School District v. Commission on State Mandates*, Case Number BS061159, in the Superior Court of the State of California, County of Los Angeles.
5. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.
6. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number C037645, in the Court of Appeal, Third Appellate District.
7. *City of San Diego v. Commission on State Mandates, et al.* Case Number GIC751187, in the Superior Court of the State of California, County of San Diego.
8. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles.
9. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number BS06911, in the Superior Court of the State of California, County of Los Angeles.
10. *County of San Bernardino v Commission on State Mandates of the State of California et al.*, Case Number SCVSS72444, in the Superior Court of the State of California, County of San Bernardino.
11. *County of San Diego v. Commission on State Mandates, et al.*, Case Number GIC762953, in the Superior Court of the State of California, County of San Diego.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee on the selection and appointment of the Attorney/Chief Legal Counsel (C.E.A.) pursuant to Government Code sections 17529 and 19889 et seq.

Chairperson Porini announced that the Commission would meet in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda and Government Code sections 11126, subdivision (a) and 17526, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Porini reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda and Government Code sections 11126, subdivision (a) and 17526, to confer on personnel matters listed on the published notice and agenda.

COMMENTS

Chairperson Porini noted that this might be Member Beltrami's last meeting. The members acknowledged Member Beltrami's many contributions to the Commission and wished him well. Member Sherwood thanked Member Beltrami for his work on *Special Education*, noting that he was very instrumental in keeping things moving and helping to resolve a very important issue. Member Sherwood added that Member Beltrami had represented the public very well and acknowledged that his service had not been for monetary purposes. Member Steinmeier agreed and added that she appreciated Member Beltrami's straightforwardness and knowledge about county government. On behalf of many representatives from the State Controller's Office, Member Harrigan agreed with the other members and thanked Member Beltrami for his insight. Member Halsey agreed as well and said it had been a pleasure working with him. Chairperson Porini thanked Member Beltrami for his years of service. Member Beltrami stated that it had been a privilege working with the Commission. Ms. Higashi added that Member Beltrami's county experience during SB 1033, and on other issues, was invaluable.

ADJOURNMENT

Chairperson Porini adjourned the meeting at 12:34 p.m.



PAULA HIGASHI
Executive Director

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COMMISSION ON STATE MANDATES

NOTICE AND AGENDA

State Capitol, Room 126
Sacramento, California

August 23, 2001

9:30 A.M. - PUBLIC SESSION

I. CALL TO ORDER AND ROLL CALL

II. APPROVAL OF MINUTES

Item 1 July 26, 2001

III. PROPOSED CONSENT CALENDAR (action)

Note: If there are no objections to any of the following action items, the Executive Director will include it on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.

IV. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

Note: Witnesses will be sworn in en masse before consideration of Items 2-6.

A. TEST CLAIMS

Item 2 *Eastview Optional Attendance Area*, CSM 99-TC-01
Palos Verdes Peninsula Unified School District, Claimant
Statutes of 1998, Chapter 868

Item 3 *Sex Crime Confidentiality*, 98-TC-21
City of Hayward, Claimant
Penal Code Section 293
Statutes of 1992, Chapter 502
Statutes of 1993, Chapter 555
Statutes of 1993-94, 1st Extraordinary Session, Chapter 36

B. PROPOSED STATEMENTS OF DECISION – TEST CLAIMS

Item 4 *Comprehensive School Safety Plans*, 98-TC-01 and 99-TC-10
Kern High School District, Claimant
Education Code Sections 35294.1, 35294.2, 35294.6 and 35294.8
Statutes of 1997, Chapter 736, Statutes of 1999, Chapter 996

- Item 5* *Sex Offenders: Disclosure by Law Enforcement Officers*, 97-TC-15
County of Tuolumne, Claimant
Penal Code Sections 290 and 290.4
Statutes of 1996, Chapters 908 and 909
Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821 and 822
Statutes of 1998, Chapters 485, 550, 927, 928, 929 and 930.
- Item 6* Dismissal of the *Educational Revenue Augmentation Fund (ERAF)*, Test Claim, 00-TC-03
City of Sacramento, Claimant
Revenue and Taxation Code Section 95, et al.
Education Code Section 41204.5, et al.
Statutes of 1992, Chapter 699, et al.

C. PROPOSED STATEMENT OF DECISION - INCORRECT REDUCTION CLAIM

- Item 7* *Graduation Requirements*, 4435-I-13 & 4435-I-39
Castro Valley Unified School District
Education Code Section 51225.3
Statutes of 1983, Chapter 498

V. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 8 *Animal Adoption*, 98-TC-11
County of Los Angeles, City of Lindsay, County of Tulare, County of Fresno and Southeast Area Animal Control Authority, Claimants
Civil Code Sections 1815, 1816, 1834, 1834.4, 1845, 1846, 1847, and 2080;
Food and Agriculture Code Sections 17005, 17006, 31108, 31752, 31752.5, 31753, 31754, 32001, and 32003; Penal Code Sections 597.1 and 599d; As Added or Amended by Statutes of 1998, Chapter 752

VI. EXECUTIVE DIRECTOR'S REPORT (info)

- Item 9 Workload, Legislation, Next Agenda

VII. PUBLIC COMMENT

VIII. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526. (Closed Executive Session may begin at this time or may begin earlier on this day and reconvene at the end of the meeting.)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *County of San Bernardino v. State of California, et al.*, Case Number B140704 in the Appellate Court of California, Second Appellate District, Division 2.
2. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number D038027, in the Appellate Court of California, Fourth Appellate District, Division 1.

3. *Department of Finance v. Commission on State Mandates, et al.*, Case Number 00CS01446, in the Superior Court of the State of California, County of Sacramento.
4. *Long Beach Unified School District v. Commission on State Mandates*, Case Number BS061159, in the Superior Court of the State of California, County of Los Angeles.
5. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.
6. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number C037645, in the Court of Appeal, Third Appellate District.
7. *City of San Diego v. Commission on State Mandates, et al.* Case Number GIC751187, in the Superior Court of the State of California, County of San Diego.
8. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles.
9. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number BS06911, in the Superior Court of the State of California, County of Los Angeles.
10. *County of San Bernardino v Commission on State Mandates of the State of California et al.*, Case Number SCVSS72444, in the Superior Court of the State of California, County of San Bernardino.
11. *County of San Diego v. Commission on State Mandates, et al.*, Case Number GIC762953, in the Superior Court of the State of California, County of San Diego.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee on the selection and appointment of the Attorney/Chief Legal Counsel (C.E.A.) pursuant to Government Code sections 17529 and 19889 et seq.

IX. REPORT FROM CLOSED EXECUTIVE SESSION

ADJOURNMENT

For information, contact Paula Higashi, Executive Director, at (916) 323-3562.

ITEM 5

TEST CLAIM PROPOSED STATEMENT OF DECISION PARTIAL APPROVAL OF TEST CLAIM

Penal Code Sections 290 and 290.4

Statutes of 1996, Chapters 908 and 909

Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821 and 822

Statutes of 1998, Chapters 485, 550, 927, 928, 929 and 930

Sex Offenders: Disclosure by Law Enforcement Officers

EXECUTIVE SUMMARY

Background

The test claim legislation (Penal Code sections 290 and 290.4) concerns the registration of certain convicted sex offenders and public disclosure of their identity by local law enforcement agencies. Section 290 specifically relates to the registration of these sex offenders when they are released from incarceration, when they move or change their temporary or permanent residence or when they update their registration on an annual basis. Section 290 also allows local law enforcement agencies to disclose the identities of sex offenders to the public when a peace officer reasonably suspects that it is necessary to protect the public. Section 290.4 requires the Department of Justice to continually compile and maintain information regarding the identity of convicted sex offenders and to establish a "900" telephone number and CD-ROM program for public access and distribution of this information to local law enforcement agencies.

The Commission approved the test claim, in part, with a vote of 5 to 2 for the following activities:

- Submission of Registered Sex Offender information to the Department of Justice's Violent Crime Information Network by Local Law Enforcement Agencies (§290, subdivision (a)(1)(F))
- Removal of Registration for Decriminalized Conduct (§290, subdivision (a)(2)(F)(i))
- Pre-register (§290, subdivision (e)(1)(A-C))
- Contents of Registration Upon Release (§290, subdivision (e)(2)(A-E))
- Notice of Reduction of Registration Period (§290, subdivision (l)(1))
- High-Risk Sex Offenders (§290, subdivision (n))
- CD ROM (§290.4, subdivision (4)(A-C))
- Records Retention (§290, subdivision (o))

Commission Findings

The sole issue before the Commission is whether the Proposed Statement of Decision accurately reflects the vote of the Commission.¹

Recommendation

Staff recommends that the Commission adopt the Proposed Statement of Decision (beginning on page 3), which accurately reflects the Commission's decision.

¹ Title 2, California Code of Regulations, section 1188.1, subdivision (g).

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Penal Code Sections 290 and 290.4

Statutes of 1996, Chapters 908 and 909;
Statutes of 1997, Chapters 17, 80, 817, 818,
819, 820, 821 and 822; Statutes of 1998,
Chapters 485, 550, 927, 928, 929 and 930

Filed on December 30, 1997;

By County of Tuolumne, Claimant.

NO. CSM 97-TC-15

*Sex Offenders: Disclosure by Law
Enforcement Officers*

PROPOSED STATEMENT OF
DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500
ET SEQ.; TITLE 2, CALIFORNIA CODE
OF REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Presented on August 23, 2001)

PROPOSED STATEMENT OF DECISION

On July 26, 2001, the Commission on State Mandates (Commission) heard this test claim during a regularly scheduled hearing. Pamela Stone, Allan Burdick and Lieutenant John Steely appeared on behalf of claimant. James Lombard and Tom Lutzenberger appeared for the Department of Finance.

At the hearing, oral and documentary evidence was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a reimbursable state mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law.

The Commission, by a vote of 5 to 2, approved, in part, the test claim.

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BACKGROUND

The test claim legislation (Penal Code sections 290 and 290.4²) concerns the registration of certain convicted sex offenders and public disclosure of their identity by local law enforcement agencies. Section 290 specifically relates to the registration of these sex offenders when they are released from incarceration, when they move or change their temporary or permanent residence or when they update their registration on an annual basis. Section 290 also allows local law enforcement agencies to disclose the identities of sex offenders to the public when a peace officer reasonably suspects that it is necessary to protect the public. Section 290.4 requires the Department of Justice to continually compile and maintain information regarding the identity of convicted sex offenders and to establish a “900” telephone number and CD-ROM program for public access of this information. The Department of Justice must distribute the information obtained on convicted sex offenders by CD-ROM or other electronic medium to local law enforcement agencies who in turn “may” then provide public access to the information. However, municipal police departments of cities with a population of less than 200,000 are exempt from this requirement.

Claimant’s Position

Claimant contends that the test claim legislation imposes a reimbursable state mandate for the following activities:

1. Registration (§290, subdivision (a))
2. Record Retention (§290, subdivision (o))
3. Reporting to the Department of Justice (§290, subdivisions (b)(2), (e)(3) and (f)(1))
4. Records Destruction (§290, subdivision (d)(5))
5. Notification of Change of Address (§290, subdivision (f))
6. Notice of Prohibited Conduct (§290, subdivision (l)(1))
7. Disclosure of Information to the Public (§290, subdivision (m))
8. Public Access to CD-ROM & File Maintenance (§290.4, subdivision (a)(4)(A))

Department of Finance’s Position

Department of Finance concedes that the test claim legislation may result in additional costs to local law enforcement agencies. Nonetheless, Department of Finance contends that these costs are not reimbursable, because the test claim legislation results in “costs mandated by the federal government.” Specifically, Department of Finance asserts that the test claim legislation does no more than implement federal law relating to the public disclosure of the identity of certain sex offenders. Department of Finance contends:

1. Section 17556(c) of the Government Code provides that the Commission on State Mandates shall not find a reimbursable mandate in a statute or executive order if the statute or executive order implemented a federal law or regulation and resulted in “costs mandated by the federal

² All further statutory references are to the Penal Code unless otherwise indicated.

government,” unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

2. Section 17513 of that Code defines “costs mandated by the federal government” as “...Any increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or regulation.” “Costs mandated by the federal government” includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. “Costs mandated by the federal government” does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the option of the state, local agency, or school district.

COMMISSION’S FINDINGS

In order for a statute or an executive order to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514, the statutory language must first direct or obligate an activity or task upon local governmental agencies. If the statutory language does not direct or obligate local agencies to perform a task, then compliance with the test claim statute or executive order is within the discretion of the local agency and a reimbursable state mandated program does not exist.

In addition, the required activity or task must constitute a new program or create a higher level of service over the former required level of service. The California Supreme Court has defined the word “program,” subject to article XIII B, section 6 of the California Constitution, as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. To determine if the “program” is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the new program or increased level of service must impose “costs mandated by the state.”³

The analysis is divided into two parts. Part 1 concerns new crimes and new timelines that an individual must register for as a convicted sex offender with the local law enforcement agency. Part 2 relates to the remaining activities presented by the test claim legislation and includes whether some or all of these activities are a “new program or higher level of service” and impose “costs mandated by the state” on local law enforcement agencies.

³ Article XIII B, section 6 of the California Constitution; *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Government Code section 17514.

PART 1 –REGISTRATION FOR NEW CRIMES AND TIMELINES

The only issue presented by Part 1, “Registration for New Crimes and Timelines,” is whether this portion of the test claim legislation creates a new crime and thus does not impose a reimbursable state mandate under article XIII B, section 6 of the California Constitution and Government Code section 17556, subdivision (g).

Article XIII B, section 6 of the California Constitution provides that the Legislature may not provide subvention of funds for mandates that define a new crime or change the existing definition of a crime. Section 6 specifically states:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

- (a) Legislative mandates requested by the local agency affected
- (b) Legislation **defining a new crime or changing an existing definition of a crime;** or [Emphasis added.]
- (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

Article XIII B, section 6 was codified by Government Code section 17556, subdivision (g), and provides that there are no “costs mandated by the state” when:

The statute **created a new crime or infraction**, eliminated a crime or infraction, or changed the penalty for a new crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction. [Emphasis added.]

Claimant contends that the registration requirements in the test claim legislation, section 290, subdivision (a), which includes the duty to register and the time periods in which to register are a reimbursable state mandated program. As described below, the majority of crimes identified in the test claim legislation are not new crimes and have imposed a duty to register on convicted sex offenders for over fifty years. However, the test claim legislation has added some additional crimes that require registration by certain convicted sex offenders. If these individuals fail to register as a sex offender within a specific time period, the test claim legislation states that they are now guilty of a misdemeanor, felony and/or a continuing offense.

- **New Crimes That Require Registration**

Under prior law, any person, since July 1, 1944, who has been convicted in any court in California, another state or a federal or military court who has been released, discharged or paroled or who has been determined to be a mentally disordered sex offender must register under section 290 if convicted under the following offenses:

kidnapping; assault to commit rape, sodomy or oral copulation; aiding or abetting rape; lewd or lascivious acts involving children; penetration by a

foreign object; sexual battery (includes seriously disabled or medically incapacitated victims); rape with a person who cannot give consent because of a mental or physical disability; rape against a person's will by means of force, violence, duress, menace or fear of immediate and unlawful bodily injury on the person or another; rape when a person cannot resist because of intoxication or anesthetic; rape when the person is unconscious; rape by threat of future harm; spousal rape; procurement; procurement of a child; abduction of a minor for prostitution; incest; sodomy; oral copulation; continuous sexual abuse of a child; production, distribution or exhibition of obscene matter; sexual exploitation of a child; employment of a minor in the sale or distribution of obscene matter or production of pornography; advertisement of obscene matters depicting minors; possession or control of child pornography; annoying or molesting children; loitering around public, open toilets for the purpose of soliciting any lewd or lascivious or unlawful act; indecent exposure; any felony violation for sending harmful matter to a minor or any crime that a court finds was committed as a result of sexual compulsion or for the purpose of sexual gratification.⁴

However, the test claim legislation⁵ now has expanded the list of crimes that require registration by convicted sex offenders and has essentially created a "new" crime, if individuals convicted of the below offenses fails to register within a specific time frame:

kidnapping for gain to commit robbery with intent to commit rape, sodomy, lewd or lascivious acts involving children, oral copulation or penetration by foreign object⁶ as well as pimping, pandering and aggravated sexual assault of a child.⁷

If the offender fails to register as a sex offender for these new crimes, then the offender is guilty of a misdemeanor, felony and/or a continuing offense. Specifically, section 290 of the test claim legislation, subdivision (g)(1), provides:

Any person who is required to register under this section based on a misdemeanor conviction who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

In addition, subdivision (g)(2) provides:

[A]ny person who is required to register under this section based on a felony conviction who willfully violates any requirement of this section or

⁴ Penal Code sections 207; 220; 264.1; 288; 272; 289; 243.4; 261, subdivision (a)(1); 261, subdivision (a)(2); 261, subdivision (a)(3); 261, subdivision (a)(4); 261, subdivision (a)(6); 262, subdivision (a)(1); 266; 266j; 267; 285; 286; 288a; 288.5; 311.2; 311.3; 311.4; 311.10; 311.11; 247, subdivision (a); 647, subdivision (d); 314; 288.2 and 290, subdivision (E).

⁵ Penal Code section 290, subdivision (a)(2)(A)-(E).

⁶ Penal Code sections 209, 261, 286, 288, 288a, and 289, Statutes of 1997, Chapter 817.

⁷ Penal Code sections 266, subdivisions (h)(b); 266, subdivisions (i)(b) and 269, Statutes of 1997, Chapter 818.

who has a prior conviction for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

Also, subdivision (g)(7) provides:

Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

Thus, under prior law, a sex offender convicted of kidnapping for gain to commit robbery with intent to commit rape, sodomy, lewd or lascivious acts involving children, oral copulation or penetration by foreign object as well as pimping, pandering and aggravated sexual assault of a child, did not have to register as a sex offender. Now, under the test claim legislation, if these convicted sex offenders fail to register, they will be guilty of a misdemeanor, felony and/or a continuing offense.

Nonetheless, claimant contends that the test claim legislation only “expands the requirement of registration for sex offenders” and does not create a new crime or change the existing definition of a crime. Claimant’s contention is correct inasmuch as the list of crimes in which a sex offender must register for has been expanded. However, claimant’s analysis of this issue is short sided. Claimant fails to recognize that by adding these crimes the test claim legislation has created a “new” crime. As stated above, if these convicted sex offenders fail to register as a sex offender, they will now be guilty of a misdemeanor, felony and/or a continuing offense; whereas before the test claim legislation, they would not have been guilty of a crime. Accordingly, the Commission finds that this portion of the test claim legislation creates a new crime.

- **New Time Periods in Which to Register**

Section 290 of the test claim legislation has also created new time periods in which certain convicted sex offenders must register including when an offender has multiple addresses, is a sexually violent predator or changes his or her name. Like the above new crimes, failure to register within the proscribed timelines is a misdemeanor, felony and/or a continuing offense.

Specifically, section 290 of the test claim legislation requires a convicted sex offender who has more than one residence to register in each jurisdiction where the offender resides. If the offender resides in one jurisdiction but has multiple addresses in that jurisdiction, then the offender must provide the local law enforcement agency in that jurisdiction with all addresses.⁸ If the offender has no residence, the offender must update his or her registration no less than every 90 days with the local law enforcement agency in which the offender is located at the time of registration.⁹

Additionally, if the convicted sex offender is a sexually violent predator, then the offender must verify his or her address and place of employment including the name and address of the employer, no less than once every 90 days in a manner established by the Department of Justice.¹⁰

⁸ Penal Code section 290, subdivision (a)(1)(B), Statutes of 1998, Chapter 929.

⁹ Penal Code section 290, subdivision (a)(1)(C), Statutes of 1997, Chapter 820.

¹⁰ Penal Code section 290, subdivision (a)(1)(E), Statutes of 1997, Chapter 818.

Lastly, if a convicted sex offender changes his or her name, the offender then must inform the local law enforcement agency where the offender is registered within 5 working days of the name change.¹¹

As mentioned above, section 290 of the test claim legislation, subdivisions (g)(1)(2)(7), states that it is a misdemeanor, felony and/or a continuing offense if a convicted sex offender does not register as required under the test claim legislation. In addition, other provisions in section 290 state that it is a crime if a convicted sex offender does not register within a specified time period. Specifically, subdivision (g)(6) provides that:

Except as otherwise provided in paragraph (5), **and in addition to any other penalty imposed under this subdivision**, any person who is required pursuant to subparagraph (B) of paragraph (1) of subdivision (a) to update his or her registration every 90 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (B) of paragraph (1) of subdivision (a) shall update their registration every 90 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. [Emphasis added.]

Subdivision (g)(5), provides that:

Any person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, fails to verify his or her registration every 90 days as required pursuant to subparagraph (D) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

Accordingly, by adding additional timelines in which convicted sex offenders must register, section 290 of the test claim legislation defines a new crime. Under prior law, these convicted sex offenders had no duty to register in the proscribed time periods. Now, under section 290 of the test claim legislation, if they do not register or provide notification of a name change, the offender may be guilty of a misdemeanor, felony or continuing offense. Accordingly, the Commission finds that this portion of the test claim legislation creates a new crime.

Conclusion

Based on the foregoing, a convicted sex offender's "Duty to Register for New Crimes and Timelines" does not impose a reimbursable state mandate under article XIII B, section 6 of the California Constitution and Government Code section 17556, subdivision (g).

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¹¹ Penal Code section 290, subdivision (f)(3), Statutes of 1996, Chapter 909.

PART 2 - REMAINING ISSUES PRESENTED BY THE TEST CLAIM LEGISLATION

Issue 1:

Is the test claim legislation a “program” within the meaning of article XIII B, section 6 of the California Constitution by carrying out either the governmental function of providing services to the public or imposing unique requirements on local law enforcement agencies?

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the test claim legislation must constitute a “program.” In *County of Los Angeles v. State of California*, the California Supreme Court defined the word “program,” within the meaning of article XIII B, section 6, as a program that carries out the governmental function of providing a service to the public, or laws, which to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.¹² In *Carmel Valley*, the court held that only one of these findings is necessary to trigger the applicability of article XIII B, section 6.¹³

To determine whether the test claim legislation carries out the governmental function of providing services to the public, it is necessary to define the program in which the test claim legislation operates.

California courts have continually held that police and fire protection are two of the most basic functions of local government and are peculiarly governmental in nature.¹⁴ In the present case, the test claim legislation concerns police protection, because it relates specifically to the registration of certain convicted sex offenders and public disclosure of their identity by local law enforcement agencies.

Accordingly, the Commission finds that test claim legislation is a “program” within the meaning of article XIII B, section 6 of the California Constitution, because it carries out the governmental function of providing police protection to the public.

Issue 2:

Is the test claim legislation a “new program or higher level of service” within the meaning of article XIII B, section 6 of the California Constitution?

To determine if a program is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.¹⁵

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¹² *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

¹³ *Carmel Valley Fire Protection Dist., supra*, 190 Cal.App.3d at 537.

¹⁴ *Carmel Valley Fire Protection Dist., supra*, 190 Cal.App.3d 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.

¹⁵ *County of Los Angeles, supra* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist., supra* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

A breakdown of the required activities imposed on local law enforcement agencies is as follows:

- **Change in Existing Timelines to Register**

Prior law required every convicted sex offender of a specified crime to register in the jurisdiction where the offender resides within 14 days of coming into the applicable jurisdiction and to update the registration within 10 days of the offender's birthday.¹⁶ The test claim legislation shortened these deadlines to within 5 working days of when an offender enters the applicable jurisdiction, and to within 5 working days of the offender's birthday for annual updates.¹⁷

In addition, prior law required that the convicted sex offender register with the local law enforcement agency that the offender was last registered with in writing within 10 days of a change of address. Within three days after receipt of this information, the local law enforcement agency must forward a copy of the change of address or location to the Department of Justice. The Department of Justice shall forward the appropriate registration data to the local law enforcement agency or agencies having jurisdiction over the new place of residence or location.¹⁸ The test claim legislation is the same as prior law, except that the time period in which an offender has to report his or her change of address was changed from 10 days to 5 working days.

The mere shortening in time of registration deadlines does not change the level of service related to the above activities. Accordingly, there is no new program or higher level of service due to a change in the existing registration deadlines.

- **Violent Crime Information Network**

The test claim legislation states that "[t]he registering agency [local law enforcement agency] shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN)."¹⁹ There was no activity in prior law requiring local law enforcement agencies to submit registrations to VCIN. Therefore, this activity is a new program or higher level of service.

- **Removal of Registration for Decriminalized Conduct**

The test claim legislation exempts a person from registering as a sex offender under specified conditions if the offender was convicted of sodomy or oral copulation between consenting adults prior to January 1, 1976. The Department of Justice is required to remove these individuals from the Sex Offender Registry. Upon notification from the Department of Justice that an offender should be removed from the register, the local law enforcement agency must remove the offender's registration from its files within 30 days from receipt of notification.²⁰ There was no activity in prior law providing for the decriminalization of this conduct. Therefore, the activity of removing an individual from a local law enforcement agency's file is a new program or higher level of service.

¹⁶ Penal Code section 290, subdivision (a), Statutes of 1984, Chapter 1419.

¹⁷ Penal Code section 290, subdivision (a)(1)(A), Statutes of 1996, Chapter 909.

¹⁸ Penal Code section 290, subdivision (e), Statutes of 1950, Chapter 70.

¹⁹ Penal Code section 290, subdivision (a)(1)(F), Statutes of 1998, Chapter 929.

²⁰ Penal Code section 290, subdivision (a)(2)(F)(i), Statutes of 1997, Chapter 821.

- **Notice of Duty to Register Upon Release, Discharge or Parole**

Prior law provides that any person who, after the first day of August, 1950, is discharged or paroled from a jail, prison, school, road camp, or other institution where the person was confined or is released from a state hospital to which he was committed as a psychopath be informed of the duty to register by the official in charge of the place of confinement before the offender is released. The official in charge must advise the convicted sex offender of the duty to register and must also have the offender read and sign a form that states this duty was explained to the offender. The official in charge of the offender's release must also obtain the address of where the person expects to reside and will report the address to the Department of Justice and to the local law enforcement agency or agencies having jurisdiction over the place that the offender expects to reside. The official in charge must give one copy of the form to the offender, send one copy to the Department of Justice and one copy to the local law enforcement agency or agencies having jurisdiction over the offender.²¹

The test claim legislation contains the same "Notice of Duty to Register" requirement as prior law, except that some non-substantive changes have been made including moving this section to 290, subdivision (b)(1) and (2). Nonetheless, since the test claim legislation contains the same notification requirement on local law enforcement agencies as prior law, there is no new program or higher level of service related to this activity.

- **Destruction of Records**

Prior law provided that all records specifically relating to the registration of sex offenders in the custody of the Department of Justice, local law enforcement agencies and other agencies or public officials be destroyed when the offender required to register has his or her records sealed under the procedures set forth in section 781 of the Welfare and Institutions Code.²²

The test claim legislation contains the same "Destruction of Records" requirement as prior law, except that some non-substantive changes have been made including moving this section to 290, subdivision(d)(5). However, the requirement to destroy the records has remained the same. Thus, there is no new program or higher level of service related to this activity.

- **Pre-register**

The test claim legislation states that a convicted sex offender required to register under its provisions on or after January 1, 1998, shall also pre-register upon incarceration, placement or commitment or prior to release on probation. The pre-registering official shall be the admitting officer at the place of incarceration, placement or commitment or the probation officer if the person is to be released on probation. The pre-registration shall consist of a pre-registration statement in writing, signed by the person, giving information that shall be required by the Department of Justice, fingerprints and a photograph of the person.²³ Prior law contained no provision for the activity of pre-registering. Thus, to the extent that a local law enforcement agency must pre-register convicted sex offenders, this activity is a new program or higher level of service.

²¹ Penal Code section 290, subdivision (b), Statutes of 1950, Chapter 70.

²² Penal Code section 290, subdivision (d)(6).

²³ Penal Code section 290, subdivision (e)(1)(A)(B)(C), Statutes of 1997, Chapter 821.

- **Contents of Registration Upon Release**

Prior law required that a convicted sex offender register upon release from incarceration, placement or commitment with the local law enforcement agency or agencies in which the offender resides. The registration must contain a statement in writing signed by the offender, giving information as may be required by the Department of Justice, fingerprints, a photograph of the offender and the license plate number of any vehicle owned by or registered in the name of the offender. Within three days of receiving this information, the registering law enforcement agency must forward this information to the Department of Justice.²⁴

In addition to the above requirements, the test claim legislation imposes some additional requirements on the convicted sex offender as well as local law enforcement agencies. With regard to the signed statement, in addition to the information required by the Department of Justice, the offender must also provide the name and address of his or her employer, and the address of the offender's place of employment if it is different from the employer's main address.²⁵ With regard to vehicle information, the convicted sex offender must also include information related to any vehicle regularly driven by the offender.²⁶ The offender must also be notified by the local law enforcement agency that in addition to the requirements of the test claim legislation, the offender may also have a duty to register in any other state where the offender may relocate.²⁷

Lastly, the test claim legislation requires that the offender provide the local law enforcement agency with adequate proof of residence, which is limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing the offender's name and address or any other information that the registering official believes is reliable. If the offender has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the offender shall advise the registering official and sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the offender has no residence, the offender shall be allowed to register. If the offender claims that he or she has a residence but does not have any proof of residence, the offender shall be allowed to register but shall furnish proof of residence within 30 days of the day the offender is allowed to register.²⁸

Although the above activities are directed at the convicted sex offenders, they also require various activities on local law enforcement agencies to the extent that local law enforcement agencies have to compile this information so that it can be sent to the Department of Justice. Thus, the compiling of this additional data is a new program or higher level of service.

²⁴ Penal Code section 290, Statutes of 1947, Chapter 1124. This provision, absent minor non-substantive changes, has remained the same since section 290 was originally enacted in 1947.

²⁵ Penal Code section 290, subdivision (e)(2)(A), Statutes of 1998, Chapter 930.

²⁶ Penal Code section 290, subdivision (e)(2)(C), Statutes of 1997, Chapter 927.

²⁷ Penal Code section 290, subdivision (e)(2)(D), Statutes of 1997, Chapter 927.

²⁸ Penal Code section 290, subdivision (e)(2)(E), Statutes of 1997, Chapter 927.

- **Notice of Reduction of Registration Period**

The test claim legislation requires that every convicted sex offender who was required to register before January 1, 1997, shall be notified whenever the offender next re-registers of the reduction in the registration period from 14 days to 5 working days. The notice must be in writing from the local law enforcement agency responsible for registering the individual.²⁹

Prior law required every convicted sex offender registering before January 1, 1985 to be notified of the reduction in the registration period from 30 to 14 days. Since the test claim legislation changes the registration period, a new notification is required.³⁰ Accordingly, the activity of notifying convicted sex offenders of the 14 to 5 day reduction in the timelines to register is a new program or higher level of service.

- **High-Risk Sex Offenders**

The test claim legislation provides that individuals considered to be high-risk offenders can be re-evaluated by the Department of Justice to be removed from the high-risk classification. This process does not involve law enforcement agencies except that the form for evaluation must be available at any sheriff's office. Thus, to the extent that a sheriff's office must maintain this form, there is a new program or higher level of service.³¹

The test claim legislation also provides that the Department of Justice shall continually search its records and identify, on the basis of those records, high-risk offenders. Four times each year, the Department must provide each chief of police and sheriff in the state and any other designated law enforcement entity upon request information regarding the identity of high-risk sex offenders.

Department of Finance contends that although the Department of Justice must send this information to each chief of police and sheriff in the state, these law enforcement agencies can choose to disregard this information, because the test claim legislation does not impose any duty on them in this regard. This assertion is misplaced. As discussed below, in the "Community Notification" section, subdivision (n) of section 290 requires local law enforcement agencies, under certain circumstances, to disclose information about high-risk sex offenders to the public, which includes statistical information. Thus, to the extent that local law enforcement agencies need to compile this statistical data related to high-risk offenders, this activity is a new program or higher level of service.³²

- **Community Notification**

The test claim legislation permits a local law enforcement agency to disclose information about a convicted sex offender³³ or high-risk sex offender³⁴ under certain circumstances if a peace

²⁹ Penal Code section 290, subdivision (l), Statutes of 1997, Chapter 821.

³⁰ Penal Code section 290, subdivision (l), Statutes of 1985, Chapter 1474.

³¹ Penal Code section 290, subdivision (n)(1)(G)(ii), Statutes of 1996, Chapter 908.

³² Penal Code section 290, subdivision (n)(2), Statutes of 1996, Chapter 908.

³³ Penal Code section 290, subdivision (m), Statutes of 1996, Chapter 908.

³⁴ Penal Code section 290, subdivision (n), Statutes of 1996, Chapter 908.

officer reasonably suspects that a child or other person is at risk. Specifically, the test claim legislation provides:

When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency **may**, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

- (A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.
- (B) Other community members at risk. [Emphasis added.]

This information generally includes information that the agency deems relevant and necessary to protect the public and may include the following:

1. The offender's full name.
2. The offender's known aliases.
3. The offender's gender.
4. The offender's race.
5. The offender's physical description.
6. The offender's photograph.
7. The offender's date of birth.
8. Crimes resulting in registration.
9. The offender's address, which must be verified prior to publication.
10. Description and license plate number of offender's vehicles or vehicles the offender is known to drive.
11. Type of victim targeted by the offender.
12. Relevant parole or probation conditions, such as one prohibiting contact with children.
13. Dates of crimes resulting in classification under the test claim legislation.
14. The date of release from confinement.³⁵

³⁵ Penal Code section 290, subdivision (m)(4), Statutes of 1996, Chapter 908.

Although it is a well-settled principle of statutory construction that the word “may” is ordinarily construed as permissive and “shall” is ordinarily construed as mandatory, there are situations in which “may” is interpreted to mean “shall.”³⁶ In *Los Angeles County v. State*,³⁷

the Third District Court of Appeal held:

The word “may” as used in a statute or constitution is often interpreted to mean “shall” or “must.” Such interpretation always depends largely, if not altogether, on the object sought to be accomplished by the law in which the word is used. It seems to be the uniform rule that, where the purpose of the law is to clothe public officers with power to be exercised for the benefit of third persons, or for the public at large – that is, where the public interest or private rights requires that the thing be done then the language, though permissive in form, is peremptory . . .

Since a peace officer is a “public officer,”³⁸ if a peace officer reasonably suspects that a child or another person is at risk from a sex offender or high-risk sex offender, the peace officer must notify certain members of the public that may be in danger from the sex offender. There was no activity in prior law related to community notification of sex offenders. Thus, the community notification activity is a new program or higher level of service.

- **CD ROM**

The test claim legislation states that on or before July 1, 1997, the Department of Justice shall provide a CD-ROM or other electronic medium containing information about certain sex offenders and shall update and distribute the CD-ROM or other electronic medium on a monthly basis to sheriff's departments in each county, municipal police departments of cities with a population of more than 200,000 and other law enforcement agencies. The local law enforcement agencies “may” obtain additional copies by purchasing a yearly subscription to the CD-ROM or other electronic medium from the Department of Justice for a yearly subscription fee and “may” make the CD-ROM or other electronic medium available for viewing by the public.³⁹

Like the Community Notification activity above, the use of the term “may,” though permissive in form, is peremptory. In fact, according to the legislative history, it was the legislative intent that the CD-ROM or other electronic medium shall be made available to the public.⁴⁰ Assembly Bill 1562 states that:

Knowing the identity of sex registrants empowers parents to protect their children from exposure to persons who might do them harm. Likewise, adult victims would similarly be empowered. It deters sex

³⁶ *Common Cause of California v. Board of Supervisors of L.A. County* (1989) 49 Cal.3d 432..

³⁷ *Los Angeles County v. State* (1923) 64 Cal.App.290.

³⁸ Government Code section 195 and Evidence Code section 200.

³⁹ Penal Code section 290.4, subdivision (a)(4)(A), Statutes of 1996, Chapter 908.

⁴⁰ Assem. Bill No. 1562 (1995-1996 Reg. Sess.) Proposed Conference Report No. 1, August 27, 1996, page 2, paragraph 12.

offenders from re-offending by increasing public awareness of their proclivities, thereby discouraging them from contact with children.⁴¹

Moreover, the California Department of Justice evaluated patterns of sex offenders and conducted a 15-year follow-up of sex offenders first arrested in 1973. The Department of Justice found:

An analysis of subsequent arrests over the 15-year period (1973-1988) found that nearly one-half (49.4%) were re-arrested for some type of offense and almost 20% (19.7%) for a subsequent sex offense. Sex offenders whose first arrest was for rape by force or threat had the highest recidivism rate, 63.4% for any offense and 25.5% for a subsequent offense. The high recidivist rate could be attributed, in part, to the anonymity of the sex offender.⁴²

Accordingly, the test claim legislation requires that the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000 and other applicable law enforcement agencies provide the necessary equipment for the public to access the sex offender information provided by the Department of Justice on CD-ROM or another electronic medium. Prior law had no provision related to this activity. Thus, this activity is a new program or higher level of service.

- **Records Retention**

The test claim legislation requires local law enforcement agencies to maintain records of those persons requesting to view the CD-ROM or other electronic medium for a minimum of five years and to maintain records of the means and dates of dissemination for a minimum of five years related to the disclosure of high-risk offenders.⁴³ There is no records retention activity under prior law related to CD-ROM or other electronic medium. Accordingly, the records retention activity is a new program or higher level of service.

Conclusion

Based on the foregoing, the following activities are a new program or higher level of service under article XIII B, section 6 of the California Constitution:

- Submission of Registered Sex Offender information to the Department of Justice's Violent Crime Information Network by Local Law Enforcement Agencies (a)(1)(F))
- Removal of Registration for Decriminalized Conduct (§290, subdivision (a)(2)(F)(i))
- Pre-register (§290, subdivision (e)(1)(A-C))
- Contents of Registration Upon Release (§290, subdivision (e)(2)(A-E))
- Notice of Reduction of Registration Period (§290, subdivision (l)(1))

⁴¹ *Supra*, page 4, paragraph 3.

⁴² *Supra*, page 4, paragraph 4.

⁴³ Penal Code section 290, subdivision (o), Statutes of 1996, Chapter 908.

- High-Risk Sex Offenders (§290, subdivision (n))
- Community Notification (§290, subdivision (m))
- CD ROM (§290.4, subdivision (4)(A-C))
- Records Retention (§290, subdivision (o))

However, the analysis must continue to determine if the above activities impose “costs mandated by the state,” under Government Code section 17514.

Issue 3:

Does the test claim legislation impose “costs mandated by the state” within the meaning of Government Code section 17514?

Under Government Code section 17514 a new program or higher level of service must impose “costs mandated by the state.” However, under Government Code section 17556, subdivision (c), the Commission **shall not** find “costs mandated by state” if the test claim legislation implemented a federal law.

Government Code section 17556, subdivision (c), provides that there are no “costs mandated by the state” when:

(c) The statute or executive order implemented a federal law or regulation **and** resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation. [Emphasis added.]

Government Code section 17513 defines “costs mandated by the federal government” as:

... any increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or regulation. “Costs mandated by the federal government” includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. “Costs mandated by the federal government” does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services **which may be implemented at the option of the state**, local agency, or school district. [Emphasis added.]

- **Federal Law**

History of the Federal Law

There are three federal enactments that concern the test claim legislation: the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Megan’s Law and the Pam Lychner Sexual Offender Tracking and Identification Act. The collective result of these

enactments is codified in 42 U.S.C. 14071-72 (referred to below as “section 14071”)⁴⁴ and represents the federal law in this matter. These three enactments are as follows:

1. The Wetterling Act, which was enacted by section 170101 of the Violent Crime Control and Law Enforcement Act of 1994,⁴⁵ encourages states to establish an effective sex offender registration system.
2. Megan’s Law,⁴⁶ which amended the provisions of the Wetterling Act, relates to the release of registration information.
3. The Lychner Act,⁴⁷ which makes further amendments to the Wetterling Act, contains provisions to ensure the nationwide availability of sex offender registration information to law enforcement agencies.

The federal Department of Justice issued guidelines for state compliance with the original version of the Wetterling Act⁴⁸ and has more recently published guidelines to implement Megan’s Law and clarify other issues concerning Wetterling Act compliance, or section 14071.⁴⁹

Overview of Section 14071

Section 14071 provides a financial incentive for states to establish 10 year registration requirements for persons convicted of certain crimes against minors and sexually violent offenses and to establish a more stringent set of registration requirements for a sub-class of highly dangerous sex offenders characterized as “sexually violent predators.” States that fail to establish such systems within three years (subject to a possible two year extension) face a 10% reduction in funding for HIV testing.⁵⁰

In order to determine if the federal exception applies to the test claim legislation, the Commission must first determine if the test claim legislation implemented section 14071 and resulted in “costs mandated by the federal government.” If so, the Commission must then determine if the test claim legislation exceeds the scope of section 14071.

• Findings

Did the Test Claim Legislation Implement Section 14071?

The legislative history of the test claim legislation shows that it was enacted to implement section 14071. Assembly Bill 1562 specifically states that the passage of the test claim legislation “will launch Megan’s Law in California and fulfill the requirements of the federal law.” “Failure to act would constitute non-compliance with the Jacob Wetterling Crimes Against

⁴⁴ 42 U.S.C.A. section 14072 is not relevant to the test claim as it specifically deals with the FBI database.

⁴⁵ 42 U.S.C.A. section 14071, Public Law 102-322, 108 Stat. 1796, 2038.

⁴⁶ 42 U.S.C.A. section 14071, Public Law 104-145, 110 Stat. 1345, May 17, 1996.

⁴⁷ 42 U.S.C.A. section 14071, Public Law 104-236, 110 Stat. 3096, 3097, October 3, 1996.

⁴⁸ 61 FR 15110 (issued April 4, 1996), Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexual Violent Offender Registration.

⁴⁹ 64 FR 572 (issued January 5, 1999) and 64 FR 3590 (issued January 22, 1999), Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexual Violent Offender Registration.

⁵⁰ 42 U.S.C.A. section 3756, subdivision (f).

Children and Sexually Violent Offender Registration Act and result in the loss of nearly \$5 million in ...funding.”⁵¹

In addition, section 14071 specifically provides that states must comply/implement its provisions or lose funding for HIV testing. Section 14071 states that the Attorney General shall establish guidelines for state programs for certain individuals convicted of specified sexual offenses.⁵² As mentioned above, the Attorney General issued these guidelines in 1996 and revised and reissued them again in 1999. Section 14071 specifically outlines the provisions that a state registration program must contain⁵³ and specifies the dates in which states must comply with section 14071 as well as the consequences if a state fails to comply with its provisions.⁵⁴

Accordingly, the Commission finds that the test claim legislation implemented section 14071. However, the analysis must continue to determine if the test claim legislation results in “costs mandated by the federal government.”

Does the Test Claim Legislation Result in Costs Mandated by the Federal Government?

“Costs mandated by the federal government” includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet a specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. However, “costs mandated by the federal government” does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services **which may be implemented at the option of the state, local agency or school district.**⁵⁵ [Emphasis added.]

In order to determine if the test claim legislation was “implemented at the option of the state,” California courts, including the California Supreme Court, have held that “[t]he test for determining whether there is a federal mandate is whether compliance with federal standards ‘is a matter of true choice,’ that is, whether participation in the federal program ‘is truly voluntary.’”⁵⁶ The *Hayes* court in following the California Supreme Court’s decisions in *City of Sacramento v. State of California (Sacramento II)*,⁵⁷ held that a “determination of whether compliance with a federal law is mandatory or optional must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to

⁵¹ Assem. Bill No. 1562 (1995-1996 Reg. Sess.) Proposed Conference Report No. 1, August 27, 1996, pages 5 and 6.

⁵² 42 U.S.C.A., section 1407(a), Public Law 103-322, 108 Stat. 2038.

⁵³ 42 U.S.C.A., section 1407(b), Public Law 103-322, 108 Stat. 2038.

⁵⁴ 42 U.S.C.A., section 1407(f)(1)(2), Public Law 103-322, 108 Stat. 2038.

⁵⁵ Government Code section 17513.

⁵⁶ *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1581; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76.

⁵⁷ *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.

participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance or withdrawal.”⁵⁸ Application of these factors in the present case is as follows:

- **Nature and Purpose of the Federal Program** - The federal legislation was enacted to provide the public with information regarding certain convicted sex offenders. The centerpiece of the test claim legislation, the registration and notification provisions related to convicted sex offenders, has its genesis in a New Jersey murder case. On July 29, 1994, Megan Kanka was raped and asphyxiated to death by Jesse Timmendequas, Megan's thirty-three year old neighbor. Unbeknownst to Megan's parents, Timmendequas was a convicted child molester living in a nearby home with two other convicted pedophiles. The brutal murder of this young girl shocked the nation, and catapulted the issue of sexually violent crimes against children onto a national stage.
- **Whether the Federal Statute Suggests an Intent to Coerce** – Although no monetary penalties would be assessed against the state for failure to implement section 14071, it would lose substantial funds for HIV testing of certain sex offenders. According to the test claim legislation, “[a] state that fails to implement the program as described in this section [the test claim legislation] shall not receive 10 percent of the funds that would otherwise be allocated to the State under section 3756 of this title.”⁵⁹ Section 3756 provides:

(a) States

Subject to subsection (f) of this section, of the total amount appropriated for this subchapter in any fiscal year, the amount remaining after setting aside the amount required to be reserved to carry out section 3761 of this title shall be set aside for section 3752 of this title and allocated to States as follows:

(1) \$500,000 or 0.25 percent, whichever is greater, shall be allocated to each of the participating States; and

(2) of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State bears to the population of all the States.⁶⁰

Subsection (f) provides for the testing of certain sex offenders for human immunodeficiency virus.⁶¹

In addition, as discussed above, the legislative history of the test claim legislation shows that if California refused to implement section 14071, it would lose

⁵⁸ *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1582; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76.

⁵⁹ 42 U.S.C.A. section 1407(a), 108 Stat. 2038.

⁶⁰ 42 U.S.C.A. section 3756(a), 108 Stat. 2138.

⁶¹ 42 U.S.C.A. section 3756(f), 108 Stat. 2138.

substantial funds for HIV testing. Specifically, Assembly Bill 1562 states that “[f]ailure to act would constitute non-compliance with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act and result in the loss of nearly \$5 million in ...funding.”⁶² Clearly, the Legislature believed that such a loss in funding was “substantial,” since it was the basis of compliance with section 14071.

Thus, although no monetary penalties would be assessed against the state for failure to implement section 14071, it would lose substantial funds for HIV testing of certain sex offenders.

- **When State and/or Local Participation Began** – Section 170101 of the Violent Crime Control and Law Enforcement Act was enacted on September 13, 1994. Congress amended and President Clinton signed the Wetterling Act portion of section 14071 in May of 1996. The test claim legislation was enacted by an “urgency statute” and became effective on September 25, 1996.
- **The Penalties, if any Assessed for Withdrawal or Refusal to Participate or Comply** – There are no penalties if a state fails to comply with the federal legislation. However, as mentioned above, failure to comply will result in a loss of federal funding for HIV testing for certain sex offenders.
- **Any Other Practical or Legal Consequence of Nonparticipation, noncompliance or withdrawal** - Practically speaking, California, like all the other states, had no choice but to comply with the federal legislation or lose substantial funding.

Based on the above factors, the Commission finds that the state had no “true choice” but to comply with the provisions of section 14071. Accordingly, the test claim legislation implemented a federal law and resulted in costs mandated by the federal government.⁶³

However, the federal exception does not apply to the extent that the test claim legislation mandates costs that exceed the mandate in that federal law or regulation.⁶⁴ Thus, the Commission must compare the test claim legislation to the federal legislation to determine which costs or activities exceed the federal mandate.

Does the Test Claim Legislation Exceed the Federal Mandate?

In order to determine if the test claim legislation exceeds section 14071, the Commission has compared the activities imposed by the test claim legislation to section 14071 below. However, before comparing the test claim legislation and section 14071, it should be noted that section 14071 was not intended to, and does not have the effect of, making states less free than they were under prior law to impose such requirements. Hence, section 14071’s standards constitute a floor for state programs, not a ceiling. States do not have to go beyond sections 14071’s

⁶² Assem. Bill No. 1562 (1995-1996 Reg. Sess.) Proposed Conference Report No. 1, August 27, 1996, pages 5 and 6.

⁶³ Government Code section 17556, subdivision (c).

⁶⁴ *Ibid.*

minimum requirements to maintain eligibility for funding, but they may retain the discretion to do so. State programs often contain elements that are not required under section 14071.⁶⁵

Activities Imposed by the Test Claim Legislation	Federal Mandate Section 14071.
Violent Crime Information Network⁶⁶	Section 14071 has no requirement that the state establish a Violent Crime Information System. Thus, this activity exceeds the federal mandate. ⁶⁷
Removal of Registration for Decriminalized Conduct⁶⁸	Section 14071 has no provision related to the activity of removing a registration for decriminalized conduct. Thus, this activity exceeds the federal mandate.
Pre-register⁶⁹	Section 14071 has no provision related to the activity of pre-registering convicted sex offenders. Thus, this activity exceeds the federal mandate.
Contents of Registration Upon Release⁷⁰	The only activity in section 14071 related to the registration activities in the test claim legislation is the requirement that local law enforcement agencies advise a convicted sex offender of a possible duty to register in any other state where the offender resides. ⁷¹ Thus, with the exception of this activity, section 14071 does not have a specific mandate related to the registration activities imposed by the test claim legislation.
Notice of Reduction of Registration Period⁷²	Section 14071 has no provision related to the notice activity. Thus, this activity exceeds the federal mandate

⁶⁵ 64 FR 572.

⁶⁶ Penal Code section 290, subdivision (a)(1)(F), Statutes of 1998, Chapter 929.

⁶⁷ 42 U.S.C.A. section 14071, subdivision (b)(2)(3)(4), 108 Stat. 2038.

⁶⁸ Penal Code section 290, subdivision (F)(i)(I)(II)(III), Statutes of 1997, Chapter 821.

⁶⁹ Penal Code section 290, subdivision (e)(1)(A)(B)(C), Statutes of 1997, Chapter 821.

⁷⁰ Penal Code section 290, subdivision (e)(2)(A)(B)(C)(D)(E), Statutes of 1997, Chapter 927.

⁷¹ 42 U.S.C.A. section 14071, subdivision (b)(iii), Public Law 103-322, 108 Stat. 2038.

⁷² Penal Code section 290, subdivision (I), Statutes of 1997, Chapter 821.

High-Risk Sex Offenders ⁷³	Section 14071 has no provision related to the activities associated with high-risk sex offenders. Thus, this activity exceeds the federal mandate.
Community Notification ⁷⁴	Section 14071 provides that any local law enforcement agency “may” release relevant information about a convicted sex offender that is necessary to protect the public concerning a specific person required to register. ⁷⁵ In the context of this section, the use of the term “may,” though permissive in form, is peremptory. Thus, the community notification activity is a federal mandate and not a “cost mandated by the state.”
CD ROM ⁷⁶	Although section 14071 has no provision related to the CD-ROM activity, Department of Finance contends that this activity merely implements federal law, because 42 U.S.C.A 14071, subdivision (e)(2), states that “the State or any agency authorized by the State shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section.” This contention is incorrect. Section 14071 does not require the relevant information to be released by CD ROM. Thus, this activity exceeds the federal mandate.
Records Retention ⁷⁷	Section 14071 has no provision related to the record retention activity. Thus, this activity exceeds the federal mandate.

In summary, the following activities imposed by the test claim legislation exceed section 14071, the federal mandate, and thus result in “costs mandated by the state:”

⁷³ Penal Code section 290, subdivision (n)(1)(G)(ii)(2), Statutes of 1996, Chapter 908.

⁷⁴ Penal Code section 290, subdivision (m)(n), Statutes of 1996, Chapter 908.

⁷⁵ 42 U.S.C.A. section 14071, subdivision (b)(iii), Public Law 103-322, 108 Stat. 2038.

⁷⁶ Penal Code section 290.4, subdivision (a)(4)(A), Statutes of 1996, Chapter 908.

⁷⁷ Penal Code section 290, subdivision (o), Statutes of 1996, Chapter 908.

- **Violent Crime Information Network**

This activity requires a local law enforcement agency to submit sex offender registrations from its jurisdictions directly into the Department of Justice Violent Crime Information Network

- **Removal of Registration for Decriminalized Conduct**

This activity requires a local law enforcement agency to remove an offender's registration from its files within 30 days of receiving a notification to do so from the Department of Justice.

- **Pre-register**

This activity requires the admitting officer of a local law enforcement agency to pre-register a convicted sex offender but only if the local law enforcement agency is the place of incarceration. This pre-registration consists of a pre-registration statement in writing, signed by the person, giving information that is required by the Department of Justice, fingerprints and a current photograph of the offender.

- **Contents of Registration Upon Release**

A convicted sex offender has always had the duty to register upon release with the local law enforcement agency in which the offender will reside. While most of the activities related to this registration falls on the convicted sex offender, the following related activities are imposed on the registering local law enforcement agency:

1. The local law enforcement agency must ensure that the signed statement that a convicted sex offender must fill out upon registration contains the name and address of the offender's employer, and the address of the offender's place of employment if that is different from the employer's main address.
2. The local law enforcement agency must ensure that the convicted sex offender includes information related to any vehicle regularly driven by the offender on the registration.
3. The local law enforcement agency must ensure that the convicted sex offender upon registering has adequate proof of residence, which is limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the offender has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the local law enforcement agency shall provide the offender with a statement stating that fact.

- **Notice of Reduction of Registration Period**

This activity requires that convicted sex offenders who were required to register before January 1, 1997, shall be notified when the offender next re-registers of the reduction in the registration period was from 14 days to 5 working days. The one-time notice must be in writing from the local law enforcement agency responsible for registering the individual.

- **High-Risk Sex Offenders**

The test claim legislation imposes some new activities on specific local law enforcement agencies related to high-risk offenders. These activities are as follows:

1. Sheriffs' offices must make available to high-risk offenders a pre-printed form from the Department of Justice regarding re-evaluation by the Department of Justice to be removed from the high-risk classification.
2. A local law enforcement agency must maintain statistical information on high-risk offenders and photographs that it receives four times a year from the Department of Justice.

- **CD ROM**

This activity requires that the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000 and other applicable law enforcement agencies provide the necessary equipment for the public to access the sex offender information provided by the Department of Justice on CD-ROM or another electronic medium.

- **Records Retention**

This activity requires a local law enforcement agency to maintain records of those persons requesting to view the CD-ROM or other electronic medium for a minimum of five years and to maintain records of the means and dates of dissemination for a minimum of five years related to the disclosure of high-risk offenders.

Finally, the test claim legislation contains a sunset provision wherein it is only operative until January 1, 2004.

CONCLUSION

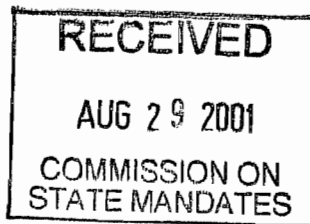
The Commission finds that Part 2 of the test claim legislation is a "program" within the meaning of article XIII B, section 6 of the California Constitution, because it carries out the governmental function of providing police protection to the public.

The Commission further finds that the following required activities, as outlined in more detail above, are a "new program or higher level of service" under article XIII B, section 6 of the California Constitution and result in "costs mandated by the state" within the meaning of Government Code section 17514:

- Submission of Registered Sex Offender information to the Department of Justice's Violent Crime Information Network by Local Law Enforcement Agencies (§290, subdivision (a)(1)(F))
- Removal of Registration for Decriminalized Conduct (§290, subdivision (a)(2)(F)(i))
- Pre-register (§290, subdivision (e)(1)(A-C))
- Contents of Registration Upon Release (§290, subdivision (e)(2)(A-E))
- Notice of Reduction of Registration Period (§290, subdivision (l)(1))
- High-Risk Sex Offenders (§290, subdivision (n))
- CD ROM (§290.4, subdivision (4)(A-C))
- Records Retention (§290, subdivision (o))

Lastly, the Commission finds that all other activities in the test claim legislation do not constitute a reimbursable state mandated program pursuant to article XIII B, section 6 of the California Constitution.

Accordingly, the Commission approves the test claim, in part, as outlined above.



ORIGINAL

PUBLIC HEARING

COMMISSION ON STATE MANDATES

--oOo--

TIME: 9:40 a.m.

DATE: Thursday, August 23, 2001

**PLACE: Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California**

--oOo--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--oOo--

Reported By:

**DANIEL P. FELDHAUS
CSR #6949, RDR, CRR**

A P P E A R A N C E S

COMMISSION ON STATE MANDATES

ANNETTE PORINI, Chair
Representative for B. TIMOTHY GAGE, Director
State Department of Finance

JOHN HARRIGAN
Representative for KATHLEEN CONNELL
State Controller

HEATHER A. HALSEY
Representative for STEVEN A. NISSEN, Director
State Office of Planning and Research

WILLIAM SHERWOOD, Vice Chair
Representative for PHILIP ANGELIDES
State Treasurer

JOANN E. STEINMEIER
School Board Member
Arcadia Unified School District

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John S. Lazar
City Council Member
Turlock City Council

COMMISSION STAFF

PAULA HIGASHI, Executive Director

SEAN AVALOS, Staff Counsel

ELLEN FISHMAN, Staff Counsel

CAMILLE SHELTON, Staff Counsel

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I N D E X

Proceedings

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I. Call to Order and Roll Call 10

II. Approval of Minutes

Item 1 July 26, 2001 11

III. Proposed Consent Calendar 11

*

y Items 4, 5, 6 and 7

(For details of each item, see below.)

IV. Hearings and Decisions, Pursuant to California Code
of Regulations, Title 2, Chapter 2.5, Article 7

A. Test Claims:

Item 2 Eastview Optional Attendance Area
CSM 99-TC-01
Palos Verdes Peninsula Unified
School District, Claimant
Postponed

Item 3 Sex Crime Confidentiality . . . 12
98-TC-21
City of Hayward, Claimant

B. Proposed Statements of Decision - Test Claims

Item 4 Comprehensive School Safety Plans 11
98-TC-01 and 99-TC-10
Kern High School District,
Claimant
(Consent Calendar Item)

Item 5 Sex Offenders: Disclosure by
Law Officers 11
97-TC-15
County of Tuolumne, Claimant
(Consent Calendar Item)

1 CHAIR PORINI: You have to bear with us. Since
2 we're in an unusual location, we have a different
3 microphone system.

4 MS. HIGASHI: The first item of business is the
5 minutes.

6 CHAIR PORINI: Any corrections, changes,
7 additions?

8 VICE CHAIR SHERWOOD: Move for approval.

9 MEMBER STEINMEIER: Second.

10 CHAIR PORINI: We have a motion and a second.
11 All those in favor, indicate with "aye."

12 *(A chorus of "ayes" was heard.)*

13 CHAIR PORINI: Opposed?

14 Minutes carry.

15 MEMBER LAZAR: I'll abstain, Madam Chair.

16 CHAIR PORINI: All right.

17 MEMBER LAZAR: I was absent at the last meeting.

18 CHAIR PORINI: Mr. Lazar is abstaining.

19 MS. HIGASHI: The next item of business is the
20 Proposed Consent Calendar, which consists of Items 4, 5,
21 6 and 7. These are the Proposed Statements of Decision.
22 You have a list of all of the items before you.

23 CHAIR PORINI: All right, Items 4, 5, 6 and 7,
24 does anyone wish to remove anything from the consent
25 calendar?

1 MEMBER STEINMEIER: Madam Chair?

2 CHAIR PORINI: Yes.

3 MEMBER STEINMEIER: I would like to move that we
4 approve the consent calendar.

5 CHAIR PORINI: We have a motion by
6 Ms. Steinmeier.

7 VICE CHAIR SHERWOOD: Second.

8 CHAIR PORINI: A second by Mr. Sherwood.

9 All in favor indicate with "aye."

10 *(A chorus of "ayes" was heard.)*

11 CHAIR PORINI: Opposed?

12 Hearing none, the consent calendar carries.

13 MS. HIGASHI: Item 2, the test claim on Eastview
14 Optional Attendance Area has been postponed.

15 This brings us to Item 3, which is a test claim
16 entitled, "Sex Crime Confidentiality." This test claim
17 will be presented by Ellen Fishman.

18 MS. FISHMAN: Good morning. This test claim
19 addresses Section 293 of the Penal Code, that relates to
20 the confidentiality of the name and the address of an
21 alleged victim of a sex offense.

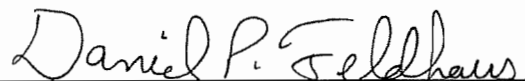
22 The test claim legislation added the requirement
23 that any law enforcement employee who personally receives
24 a report from a person alleged to be a victim of a sex
25 offense shall inform that person that his or her name

REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were reported by me at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings, nor in any way interested in the outcome of the cause named in said matter.

In witness whereof, I have hereunto set my hand this 28th day of August 2001.



DANIEL P. FELDHAUS
CSR #6949, RDR, CRR

MINUTES

COMMISSION ON STATE MANDATES

U.S. Bank Building, 980 Ninth Street¹
Second Floor Conference Room
Sacramento, California
August 23, 2001

Present: Chairperson Annette Porini
Representative of the Director of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Heather Halsey
Representative of the Director of the Office of Planning and Research
Member John Harrigan
Representative of the State Controller
Member Joann Steinmeier
School Board Member
Member John Lazar
City Council Member
Vacant: Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Porini called the meeting to order at 9:40 a.m.

APPROVAL OF MINUTES

Item 1 July 26, 2001

Upon motion by Member Sherwood and second by Member Steinmeier, the minutes were adopted. Member Lazar abstained.

PROPOSED CONSENT CALENDAR

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS,
TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

PROPOSED STATEMENTS OF DECISION – TEST CLAIMS

Item 4 *Comprehensive School Safety Plans*, 98-TC-01 and 99-TC-10
Kern High School District, Claimant
Education Code Sections 35294.1, 35294.2, 35294.6 and 35294.8
Statutes of 1997, Chapter 736, Statutes of 1999, Chapter 996

¹ The Commission meeting was moved to this location because the Legislature needed State Capital Room 126 for legislative hearings. All parties were notified and signs were posted to direct the public to the meeting location.

- Item 5 *Sex Offenders: Disclosure by Law Enforcement Officers*, 97-TC-15
County of Tuolumne, Claimant
Penal Code Sections 290 and 290.4
Statutes of 1996, Chapters 908 and 909
Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821 and 822
Statutes of 1998, Chapters 485, 550, 927, 928, 929 and 930
- Item 6 Dismissal of the *Educational Revenue Augmentation Fund (ERAF)*, Test
Claim, 00-TC-03
City of Sacramento, Claimant
Revenue and Taxation Code Section 95, et al.
Education Code Section 41204.5, et al.
Statutes of 1992, Chapter 699, et al.

PROPOSED STATEMENT OF DECISION - INCORRECT REDUCTION CLAIM

- Item 7 *Graduation Requirements*, 4435-I-13 & 4435-I-39
Castro Valley Unified School District
Education Code Section 51225.3
Statutes of 1983, Chapter 498

Member Steinmeier moved for adoption of the consent calendar. With a second by Member Sherwood, the consent calendar was unanimously adopted.

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

TEST CLAIMS

- Item 2 *Eastview Optional Attendance Area*, CSM 99-TC-01
Palos Verdes Peninsula Unified School District, Claimant
Statutes of 1998, Chapter 868

This item was postponed at the request of the claimant.

- Item 3 *Sex Crime Confidentiality*, 98-TC-21
City of Hayward, Claimant
Penal Code Section 293
Statutes of 1992, Chapter 502
Statutes of 1993, Chapter 555
Statutes of 1993-94, 1st Extraordinary Session, Chapter 36

Ellen Fishman, Staff Counsel, presented this item. She explained that the test claim addresses section 293 of the Penal Code relating to the confidentiality of the name and address of an alleged victim of a sex offense. Ms. Fishman noted that the test claim legislation added the following requirements: any law enforcement employee who personally receives a report from a person alleged to be a victim of a sex offense shall inform that person that his or her name will become a matter of public record unless he or she requests otherwise; any written report of an alleged sex offense shall indicate that the alleged victim has been informed of the right to confidentiality and shall indicate his or her response; and, law enforcement agencies are prohibited from disclosing the name or address of the victim, except to certain specified law

enforcement personnel. Staff found the test claim legislation imposes a new program or higher level of service on local law enforcement agencies for the activities listed in staff's analysis.

Parties were represented as follows: Pamela Stone, Harry Bruno, and Veronica Larson, with the City of Hayward and Jennifer Osborn with the Department of Finance.

Ms. Stone thanked staff for their efforts and concurred with staff's analysis. Mr. Bruno also agreed with staff's analysis and added that the increase in service has been great for his community. Ms. Osborn noted her agreement with staff's analysis and with staff's recommendation to address the specific activities in the parameters and guidelines phase.

Member Harrigan moved staff's analysis. With a second by Member Halsey, the motion passed unanimously.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

Item 8 *Animal Adoption*, 98-TC-11

County of Los Angeles, City of Lindsay, County of Tulare, County of Fresno and Southeast Area Animal Control Authority, Claimants
Civil Code Sections 1815, 1816, 1834, 1834.4, 1845, 1846, 1847, and 2080;
Food and Agriculture Code Sections 17005, 17006, 31108, 31752, 31752.5, 31753, 31754, 32001, and 32003; Penal Code Sections 597.1 and 599d; As Added or Amended by Statutes of 1998, Chapter 752

Camille Shelton, Staff Counsel, presented this item. She noted that one issue still in dispute relates to offsetting savings. The Counties of Fresno, Tulare, and Mendocino contended that Section 30652 of the Food and Agricultural Code (hereinafter referred to as "Section 30652") should not be included in the parameters and guidelines as a source of offsetting savings because the revenue generated does not cover the cost of the reimbursable activities. In its late filing, Mendocino County argued that local agencies were offsetting that revenue against field and sheltering services before the test claim legislation. Staff agreed that the revenue can be used for those services, but noted that, if a county receives excess revenue, it could be applied to the reimbursable activities and so staff left Section 30652 as an offset in the parameters and guidelines. Staff recommended the Commission adopt the proposed parameters and guidelines, as corrected by the errata dated August 17, 2001.

Parties were represented as follows: Leonard Kaye and Marcia Mayeda, with the County of Los Angeles; Pamela Stone, with the Counties of Tulare and Fresno; Tom Sherry, with the County of Tulare; Allan Burdick, with the California State Association of Counties; Tim Casagrande, with the County of Fresno; Amber Pearce, with the Department of Finance; and Shawn Silva, with the State Controller's Office.

Mr. Kaye commended staff for its efforts. He added that, due to the fine print in this area, if not all proposed changes are adopted today, he intended to review the parameters and guidelines and file amendments. Mr. Kaye urged the Commission to adopt the parameters and guidelines today.

The Chair directed the witnesses to confine comments to the parameters and guidelines.

Ms. Mayeda stated that she agreed, in large part, with staff's recommendations, but was concerned with the offsetting of increased costs.

Ms. Stone noted staff's recommendation for reimbursement of one-time costs for medical, kennel and computer equipment. She contended that fixed assets have a limited useful life and therefore requested reimbursement for ongoing costs. Ms. Stone suggested using a prorated methodology to account for use of the equipment for the categories of animals not covered for reimbursement.

Mr. Sherry voiced his concern about the offsetting savings language recommended by staff. He argued that field enforcement activities are separate from the shelter activities affected by this mandate.

Mr. Casagrande disagreed with staff's analysis regarding reimbursement of construction costs. He explained that, in the County of Fresno, additional facility space was not needed or planned for prior to this mandate. Mr. Casagrande submitted that the total costs of construction the County subsequently experienced are attributable to the mandate and should be reimbursable. He added that, for counties with expansion plans in place before the mandate or counties also using new facilities for other purposes, a pro rata reimbursement might be appropriate, but Fresno County had no expansion plans and its new facility is being totally utilized to meet this mandate.

Ms. Shelton replied that, to find that construction or acquiring additional facilities is reasonably necessary, it must be related back to an activity the Commission found to be reimbursable. She added that this was the reason for the inclusion of the pro rata language.

Mr. Silva was concerned with staff's defining "prompt and necessary veterinary care" as all reasonable medical procedures performed to make the animals adoptable. He argued that this definition removes the sense of urgency implied by the words "prompt" and "necessary," therefore expanding the scope of the mandate. Mr. Silva submitted that the interpretation of "reasonable" might differ between auditors and veterinarians. He contended that this standardless analysis creates difficulties for the State Controller's Office and therefore asked the Commission to define what is and what is not covered.

Mr. Silva further disagreed with staff's exclusion of rewards from offsetting savings. Regarding the inclusion of offsetting language referencing Section 30652, Mr. Silva agreed with staff's analysis, but submitted that the issue was actually whether the funds were available as opposed to utilized. He agreed with Mendocino's suggestion for a pro rata analysis. Regarding the issues of construction and renovation, Mr. Silva supported staff's analysis and the certification requirement. However, he was concerned that there are no standards on what constitutes the appropriate space or density of animals and was unsure of how the SCO would determine reasonableness and reimbursement. Mr. Silva noted that the reasonable standard might have to be the pre-statute density of animals.

Ms. Pearce agreed with staff's analysis. She also agreed that using unit cost at this time is inappropriate since no standard exists across the state. She argued that the initial physical exam of the animal should not be included within the definition of "reasonable and necessary veterinary care" because it is a basic function of a shelter that is already being done. She added that the definition seems to be broad and agreed with the SCO's suggestion to include a list of what is not reimbursable. Ms. Pearce submitted that, as far as excess revenue and any rewards, it is appropriate to provide offsetting savings to the general reimbursable claims because legislation and the code provides for that.

Member Steinmeier noted her concern that, during the process of developing these parameters and guidelines, everyone needs to be sure they have the same understanding as the State Controller's Office or the Commission will end up with Incorrect Reduction Claims. She asked Ms. Shelton to discuss the SCO's comments about standardization for care and about a pro rata analysis of licensing fees.

Ms. Shelton noted that no state agency defines standard veterinary care and that the comments submitted in the record regarding standards have no supporting evidence. Staff found that the language proposed by the veterinarian from the County of San Diego was consistent with the intent of the legislation. She added that staff included veterinary care exclusions that were statutorily based. Regarding construction, Ms. Shelton explained that there is no requirement to use the Humane Societies standards for population density. She stated that claimants would have to go through a certification process to show that construction was the most reasonable solution and then reimbursement would be on a pro rata basis.

Regarding the SCO's concern about excess fees and staff's use of the phrase "as applied," Ms. Shelton explained that the fee authority does not tell agencies how to apply it. Member Steinmeier asked about using the standard of what agencies were doing before the statute. Ms. Shelton agreed that might be reasonable, but said she needed the claimants or state agencies to propose language or a formula for staff to consider.

Member Sherwood thanked the SCO for coming forward now, thereby decreasing the potential for IRCs on this issue. He was concerned that the Commission might need more input from the parties before moving forward. For example, Member Sherwood questioned whether proportional offsets are allowed in other Commission decisions. Ms. Shelton clarified that the statute is identified in the statement of decision as a potential offsetting revenue source. She added that proposed language from the parties might help staff to clarify this issue.

Member Harrigan shared the same concerns as Members Steinmeier and Sherwood and suggested postponing the item and outlining the remaining issues for staff.

Chairperson Porini called forward the next group of interested party and interested person witnesses. Parties were represented as follows: John Humphrey, with the San Diego County Department of Animal Control; Frank Zotter, with the Mendocino County Counsel's Office; Jennifer Clarke, with Tuolumne County Animal Control; Michael Ross, with Contra Costa County Animal Services and California Animal Control Director's Association; and, Lois Newman, with the Cat and Dog Rescue Association.

Mr. Ross complimented staff on its thorough analysis. He disagreed with the offsetting language regarding Section 30652 and noted that his county, and other counties he was aware of, fully utilized the license fees to support the programs in existence prior to the enactment of the statute. Mr. Ross contended that, unless the fees were raised to support the mandate, there would be no excess money available.

Regarding construction costs, Mr. Clarke explained that Tuolumne County's cost analysis for expanding its facility increased due to the increased holding requirements. The County is currently leasing space, but Mr. Clarke was concerned that their costs might not be reimbursable if construction is not started for a few years.

Mr. Zotter apologized for his late filing and thanked staff for its response. He explained that he was not necessarily in disagreement with the other counties, but he offered the pro rata analysis

for offsetting costs as an alternative. He further submitted that Penal Code section 597, subdivision (f), was mentioned in Section 30652, but those costs, like the shelter and field costs, were preexisting and therefore should not be offset.

Mr. Humphrey agreed with staff's recommendation, as amended, with one exception. He asked for clarification of the language regarding the use of excess fees. He further requested the Commission find ongoing costs for periodic computer software license renewal requirements to the extent they are not claimed as indirect costs. Mr. Humphrey urged the Commission to adopt the Humane Society standards submitted by the SCO to set the benchmark for the upper limits of reimbursement. Regarding veterinary care, he submitted that the term "urgency" is not in the statute and that the "pre-statute density" mentioned earlier was not consistent with the statute or Humane Society standards. Regarding DOF's exclusion of the initial vet exam, Mr. Humphrey argued that, though it may have been a practice of some agencies, the mandate now requires it.

Ms. Newman argued that any costs associated with the test claim legislation can be fully recovered by fees charged by counties and therefore, pursuant to Article XIII B, section 6, should not be eligible for state mandate reimbursement. She further argued against staff's use of 1998 figures for numbers of animals in each jurisdiction and stated that figures for 1996 through 2000 would provide a more accurate picture. Ms. Newman submitted that only additional kennels and associated space for dogs and cats should be calculated in additional housing costs so the taxpayers are not being double-taxed for capital improvements through both their local jurisdictions bond-raising methods and the state mandates process. She also argued that wellness vaccinations should not be reimbursable because many jurisdictions have charged for them for years and some include a charge in the adoption fees. She argued that the local taxpayers pay for shelter operations, including veterinary supplies, the adopter pays for vaccinations, so state mandate reimbursement would be a third source of reimbursement for the same activity.

The Commissioners agreed to hold this item over for staff to explore the areas of concern raised today. Mr. Burdick asked if the experts who traveled here today could meet with staff. Ms. Shelton replied that she would prefer written submissions and that she would send out a copy of today's hearing transcript. She noted that Mendocino County might want to propose language on offsetting costs and that she needed evidence in the record from a veterinarian supporting a standard for "prompt and necessary veterinary care" if someone had a proposal different from the County of San Diego's used by staff.

EXECUTIVE DIRECTOR'S REPORT

Item 9 Workload, Legislation, Next Agenda

Ms. Higashi noted the following:

➤ *Legislation.*

Local Claims Bill (SB 348). Next week, the Joint Legislative Audit Committee will consider whether to authorize an audit of *School Bus Safety II* claims by the Bureau of the State Audits pursuant to the Legislative Analyst's report. If the audit is approved, the claims bill will be amended to provide a procedure for the Director of Finance to release funds upon completion of the audit and a notification period to the respective chairpersons of the Assembly and Senate Budget Subcommittees for Education.

Special Education (SB 982). The Governor signed the bill. The Commission has notified claimants' representatives that it is awaiting withdrawal letters for the two pending *Special Education* matters (3-5 and 18-21 *Special Education Services* filed by Long Beach Unified School District and *Preschool Transportation* filed by supplemental claimants).

Mandate Reform Bill (AB 745). Recently amended, the bill is in the Senate Committee on Appropriation's suspense file.

➤ *Personnel.* Sean Avalos, Commission Staff Counsel, has accepted another position with the Department of Motor Vehicles.

➤ *Future Hearing Agendas.* The Commission will hold a special executive session meeting on personnel matters on September 28, 2001. Member Steinmeier noted that she would be unable to attend the regularly scheduled September 27, 2001 Commission hearing and that she was concerned about missing the *Eastview Optional Attendance Area* test claim. She added that she would like to be involved in that discussion because she had several questions but did not know if anyone wanted to postpone it. Ms. Higashi replied that a prehearing conference was set on that claim and that the schedule could be reconsidered at that time. Member Steinmeier noted that the Commission would be short two members at that hearing since the public member seat was vacant.

PUBLIC COMMENT

Allan Burdick asked the Commission to adopt a resolution thanking former Commission member Al Beltrami for his service. Chairperson Porini replied that the Commission planned to invite Mr. Beltrami back to present him with a resolution and would inform parties of the occasion in advance.

**CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS
11126 and 17526.**

PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *County of San Bernardino v. State of California, et al.*, Case Number B140704 in the Appellate Court of California, Second Appellate District, Division 2.
2. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number D038027, in the Appellate Court of California, Fourth Appellate District, Division 1.
3. *Department of Finance v. Commission on State Mandates, et al.*, Case Number 00CS01446, in the Superior Court of the State of California, County of Sacramento.
4. *Long Beach Unified School District v. Commission on State Mandates*, Case Number BS061159, in the Superior Court of the State of California, County of Los Angeles.
5. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.
6. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number C037645, in the Court of Appeal, Third Appellate District.
7. *City of San Diego v. Commission on State Mandates, et al.* Case Number GIC751187, in the Superior Court of the State of California, County of San Diego.
8. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles.
9. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number BS06911, in the Superior Court of the State of California, County of Los Angeles.
10. *County of San Bernardino v Commission on State Mandates of the State of California et al.*, Case Number SCVSS72444, in the Superior Court of the State of California, County of San Bernardino.
11. *County of San Diego v. Commission on State Mandates, et al.*, Case Number GIC762953, in the Superior Court of the State of California, County of San Diego.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee on the selection and appointment of the Attorney/Chief Legal Counsel (C.E.A.) pursuant to Government Code sections 17529 and 19889 et seq.

Chairperson Porini announced that the Commission would meet in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda and Government Code sections 11126, subdivision (a) and 17526, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Porini reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda and Government Code sections 11126, subdivision (a) and 17526, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Chairperson Porini adjourned the meeting at 11:39 a.m.



PAULA HIGASHI

Executive Director

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COMMISSION ON STATE MANDATES

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August 24, 2001

Ms. Pamela Stone
DMG-MAXIMUS, Inc
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

State Agencies and Interested Parties (See Attached Mailing List)

RE: Adopted Statement of Decision
Sex Offenders: Disclosure by Law Enforcement Officers, 97-TC-15
County of Tuolumne, Claimant
Penal Code Sections 290 and 290.4
Statutes of 1996, Chapters 908 and 909
Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821 and 822
Statutes of 1998, Chapters 485, 550, 927, 928, 929 and 930

Dear Ms. Pamela Stone:

The Commission on State Mandates adopted the attached Statement of Decision on August 23, 2001. This decision is effective on August 24, 2001.

State law provides that reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program; approval of a statewide cost estimate; a specific legislative appropriation for such purpose; a timely-filed claim for reimbursement; and subsequent review of the claim by the State Controller's Office. Following is a description of the responsibilities of all parties and the Commission during the parameters and guidelines phase.

- **Claimant's Submission of Proposed Parameters and Guidelines.** Pursuant to Government Code 17557 and Title 2, CCR sections 1183.1 et seq. (the regulations), the claimant is responsible for submitting proposed parameters and guidelines by September 24, 2001. See Government Code section 17557 and Title 2, CCR sections 1183.1 et seq. for guidance in preparing and filing a timely submission.
- **Review of Proposed Parameters and Guidelines.** Within ten days of receipt of completed proposed parameters and guidelines, the Commission will send copies to the Department of Finance, Office of the State Controller, affected state agencies, and interested parties who are on the enclosed mailing list. All recipients will be given an opportunity to provide written comments or recommendations to the Commission within 15 days of service. The claimant and other interested parties may submit written rebuttals. See CCR section 1183.11.

- **Adoption of Parameters and Guidelines.** After review of the proposed parameters and guidelines and all comments, Commission staff will recommend the adoption of the claimant's proposed parameters and guidelines or adoption of an amended, modified, or supplemented version of the claimant's original submission. See CCR section 1183.12.

Please contact Nancy Patton at (916) 323-3562 if you have any questions.

Sincerely,



PAULA HIGASHI

Executive Director

Enclosure: Adopted Statement of Decision

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MAILED: ☒
FAXED: ☒
DATE: 8/24/01
INITIAL: VS
FILE: ☒
WORKING BINDER: ☒

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Penal Code Sections 290 and 290.4 Statutes of 1996, Chapters 908 and 909; Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821 and 822; Statutes of 1998, Chapters 485, 550, 927, 928, 929 and 930

Filed on December 30, 1997 and Amended on July 14, 1999;

By County of Tuolumne, Claimant.

NO. CSM 97-TC-15

*Sex Offenders: Disclosure by Law
Enforcement Officers*


STATEMENT OF DECISION
PURSUANT TO GOVERNMENT CODE
SECTION 17500 ET SEQ.; TITLE 2,
CALIFORNIA CODE OF
REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted on August 23, 2001)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on August 24, 2001.



Paula Higashi, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Penal Code Sections 290 and 290.4

Statutes of 1996, Chapters 908 and 909;
Statutes of 1997, Chapters 17, 80, 817, 818,
819, 820, 821 and 822; Statutes of 1998,
Chapters 485, 550, 927, 928, 929 and 930

Filed on December 30, 1997 and Amended on
July 14, 1999;

By County of Tuolumne, Claimant.

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*Sex Offenders: Disclosure by Law
Enforcement Officers*

STATEMENT OF DECISION
PURSUANT TO GOVERNMENT CODE
SECTION 17500 ET SEQ.; TITLE 2,
CALIFORNIA CODE OF
REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted on August 23, 2001)

STATEMENT OF DECISION

On July 26, 2001, the Commission on State Mandates (Commission) heard this test claim during a regularly scheduled hearing. Pamela Stone, Allan Burdick and Lieutenant John Steely appeared on behalf of claimant. James Lombard and Tom Lutzenberger appeared for the Department of Finance.

At the hearing, oral and documentary evidence was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a reimbursable state mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law.

The Commission, by a vote of 5 to 2, approved, in part, the test claim.

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BACKGROUND

The test claim legislation (Penal Code sections 290 and 290.4¹) concerns the registration of certain convicted sex offenders and public disclosure of their identity by local law enforcement agencies. Section 290 specifically relates to the registration of these sex offenders when they are released from incarceration, when they move or change their temporary or permanent residence or when they update their registration on an annual basis. Section 290 also allows local law enforcement agencies to disclose the identities of sex offenders to the public when a peace officer reasonably suspects that it is necessary to protect the public. Section 290.4 requires the Department of Justice to continually compile and maintain information regarding the identity of convicted sex offenders and to establish a "900" telephone number and CD-ROM program for public access of this information. The Department of Justice must distribute the information obtained on convicted sex offenders by CD-ROM or other electronic medium to local law enforcement agencies who in turn "may" then provide public access to the information. However, municipal police departments of cities with a population of less than 200,000 are exempt from this requirement.

Claimant's Position

Claimant contends that the test claim legislation imposes a reimbursable state mandate for the following activities:

1. Registration (§290, subdivision (a))
2. Record Retention (§290, subdivision (o))
3. Reporting to the Department of Justice (§290, subdivisions (b)(2), (e)(3) and (f)(1))
4. Records Destruction (§290, subdivision (d)(5))
5. Notification of Change of Address (§290, subdivision (f))
6. Notice of Prohibited Conduct (§290, subdivision (l)(1))
7. Disclosure of Information to the Public (§290, subdivision (m))
8. Public Access to CD-ROM & File Maintenance (§290.4, subdivision (a)(4)(A))

Department of Finance's Position

Department of Finance concedes that the test claim legislation may result in additional costs to local law enforcement agencies. Nonetheless, Department of Finance contends that these costs are not reimbursable, because the test claim legislation results in "costs mandated by the federal government." Specifically, Department of Finance asserts that the test claim legislation does no more than implement federal law relating to the public disclosure of the identity of certain sex offenders. Department of Finance contends:

1. Section 17556(c) of the Government Code provides that the Commission on State Mandates shall not find a reimbursable mandate in a statute or executive order if the statute or executive order implemented a federal law or regulation and resulted in "costs mandated by the federal

¹ All further statutory references are to the Penal Code unless otherwise indicated.

government,” unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

2. Section 17513 of that Code defines “costs mandated by the federal government” as “...Any increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or regulation.” “Costs mandated by the federal government” includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. “Costs mandated by the federal government” does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the option of the state, local agency, or school district.

COMMISSION’S FINDINGS

In order for a statute or an executive order to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514, the statutory language must first direct or obligate an activity or task upon local governmental agencies. If the statutory language does not direct or obligate local agencies to perform a task, then compliance with the test claim statute or executive order is within the discretion of the local agency and a reimbursable state mandated program does not exist.

In addition, the required activity or task must constitute a new program or create a higher level of service over the former required level of service. The California Supreme Court has defined the word “program,” subject to article XIII B, section 6 of the California Constitution, as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. To determine if the “program” is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the new program or increased level of service must impose “costs mandated by the state.”²

The analysis is divided into two parts. Part 1 concerns new crimes and new timelines that an individual must register for as a convicted sex offender with the local law enforcement agency. Part 2 relates to the remaining activities presented by the test claim legislation and includes whether some or all of these activities are a “new program or higher level of service” and impose “costs mandated by the state” on local law enforcement agencies.

² Article XIII B, section 6 of the California Constitution; *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Government Code section 17514.

PART 1 –REGISTRATION FOR NEW CRIMES AND TIMELINES

The only issue presented by Part 1, “Registration for New Crimes and Timelines,” is whether this portion of the test claim legislation creates a new crime and thus does not impose a reimbursable state mandate under article XIII B, section 6 of the California Constitution and Government Code section 17556, subdivision (g).

Article XIII B, section 6 of the California Constitution provides that the Legislature may not provide subvention of funds for mandates that define a new crime or change the existing definition of a crime. Section 6 specifically states:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

- (a) Legislative mandates requested by the local agency affected
- (b) Legislation **defining a new crime or changing an existing definition of a crime**; or [Emphasis added.]
- (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

Article XIII B, section 6 was codified by Government Code section 17556, subdivision (g), and provides that there are no “costs mandated by the state” when:

The statute **created a new crime or infraction**, eliminated a crime or infraction, or changed the penalty for a new crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction. [Emphasis added.]

Claimant contends that the registration requirements in the test claim legislation, section 290, subdivision (a), which includes the duty to register and the time periods in which to register are a reimbursable state mandated program. As described below, the majority of crimes identified in the test claim legislation are not new crimes and have imposed a duty to register on convicted sex offenders for over fifty years. However, the test claim legislation has added some additional crimes that require registration by certain convicted sex offenders. If these individuals fail to register as a sex offender within a specific time period, the test claim legislation states that they are now guilty of a misdemeanor, felony and/or a continuing offense.

- **New Crimes That Require Registration**

Under prior law, any person, since July 1, 1944, who has been convicted in any court in California, another state or a federal or military court who has been released, discharged or paroled or who has been determined to be a mentally disordered sex offender must register under section 290 if convicted under the following offenses:

kidnapping; assault to commit rape, sodomy or oral copulation; aiding or abetting rape; lewd or lascivious acts involving children; penetration by a

foreign object; sexual battery (includes seriously disabled or medically incapacitated victims); rape with a person who cannot give consent because of a mental or physical disability; rape against a person's will by means of force, violence, duress, menace or fear of immediate and unlawful bodily injury on the person or another; rape when a person cannot resist because of intoxication or anesthetic; rape when the person is unconscious; rape by threat of future harm; spousal rape; procurement; procurement of a child; abduction of a minor for prostitution; incest; sodomy; oral copulation; continuous sexual abuse of a child; production, distribution or exhibition of obscene matter; sexual exploitation of a child; employment of a minor in the sale or distribution of obscene matter or production of pornography; advertisement of obscene matters depicting minors; possession or control of child pornography; annoying or molesting children; loitering around public, open toilets for the purpose of soliciting any lewd or lascivious or unlawful act; indecent exposure; any felony violation for sending harmful matter to a minor or any crime that a court finds was committed as a result of sexual compulsion or for the purpose of sexual gratification.³

However, the test claim legislation⁴ now has expanded the list of crimes that require registration by convicted sex offenders and has essentially created a "new" crime, if individuals convicted of the below offenses fails to register within a specific time frame:

kidnapping for gain to commit robbery with intent to commit rape, sodomy, lewd or lascivious acts involving children, oral copulation or penetration by foreign object⁵ as well as pimping, pandering and aggravated sexual assault of a child.⁶

If the offender fails to register as a sex offender for these new crimes, then the offender is guilty of a misdemeanor, felony and/or a continuing offense. Specifically, section 290 of the test claim legislation, subdivision (g)(1), provides:

Any person who is required to register under this section based on a misdemeanor conviction who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

In addition, subdivision (g)(2) provides:

[A]ny person who is required to register under this section based on a felony conviction who willfully violates any requirement of this section or

³ Penal Code sections 207; 220; 264.1; 288; 272; 289; 243.4; 261, subdivision (a)(1); 261, subdivision (a)(2); 261, subdivision (a)(3); 261, subdivision (a)(4); 261, subdivision (a)(6); 262, subdivision (a)(1); 266; 266j; 267; 285; 286; 288a; 288.5; 311.2; 311.3; 311.4; 311.10; 311.11; 247, subdivision (a); 647, subdivision (d); 314; 288.2 and 290, subdivision (E).

⁴ Penal Code section 290, subdivision (a)(2)(A)-(E).

⁵ Penal Code sections 209, 261, 286, 288, 288a, and 289, Statutes of 1997, Chapter 817.

⁶ Penal Code sections 266, subdivisions (h)(b); 266, subdivisions (i)(b) and 269, Statutes of 1997, Chapter 818.

who has a prior conviction for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

Also, subdivision (g)(7) provides:

Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

Thus, under prior law, a sex offender convicted of kidnapping for gain to commit robbery with intent to commit rape, sodomy, lewd or lascivious acts involving children, oral copulation or penetration by foreign object as well as pimping, pandering and aggravated sexual assault of a child, did not have to register as a sex offender. Now, under the test claim legislation, if these convicted sex offenders fail to register, they will be guilty of a misdemeanor, felony and/or a continuing offense.

Nonetheless, claimant contends that the test claim legislation only “expands the requirement of registration for sex offenders” and does not create a new crime or change the existing definition of a crime. Claimant’s contention is correct inasmuch as the list of crimes in which a sex offender must register for has been expanded. However, claimant’s analysis of this issue is short sided. Claimant fails to recognize that by adding these crimes the test claim legislation has created a “new” crime. As stated above, if these convicted sex offenders fail to register as a sex offender, they will now be guilty of a misdemeanor, felony and/or a continuing offense; whereas before the test claim legislation, they would not have been guilty of a crime. Accordingly, the Commission finds that this portion of the test claim legislation creates a new crime.

- **New Time Periods in Which to Register**

Section 290 of the test claim legislation has also created new time periods in which certain convicted sex offenders must register including when an offender has multiple addresses, is a sexually violent predator or changes his or her name. Like the above new crimes, failure to register within the proscribed timelines is a misdemeanor, felony and/or a continuing offense.

Specifically, section 290 of the test claim legislation requires a convicted sex offender who has more than one residence to register in each jurisdiction where the offender resides. If the offender resides in one jurisdiction but has multiple addresses in that jurisdiction, then the offender must provide the local law enforcement agency in that jurisdiction with all addresses.⁷ If the offender has no residence, the offender must update his or her registration no less than every 90 days with the local law enforcement agency in which the offender is located at the time of registration.⁸

Additionally, if the convicted sex offender is a sexually violent predator, then the offender must verify his or her address and place of employment including the name and address of the employer, no less than once every 90 days in a manner established by the Department of Justice.⁹

⁷ Penal Code section 290, subdivision (a)(1)(B), Statutes of 1998, Chapter 929.

⁸ Penal Code section 290, subdivision (a)(1)(C), Statutes of 1997, Chapter 820.

⁹ Penal Code section 290, subdivision (a)(1)(E), Statutes of 1997, Chapter 818.

Lastly, if a convicted sex offender changes his or her name, the offender then must inform the local law enforcement agency where the offender is registered within 5 working days of the name change.¹⁰

As mentioned above, section 290 of the test claim legislation, subdivisions (g)(1)(2)(7), states that it is a misdemeanor, felony and/or a continuing offense if a convicted sex offender does not register as required under the test claim legislation. In addition, other provisions in section 290 state that it is a crime if a convicted sex offender does not register within a specified time period. Specifically, subdivision (g)(6) provides that:

Except as otherwise provided in paragraph (5), **and in addition to any other penalty imposed under this subdivision**, any person who is required pursuant to subparagraph (B) of paragraph (1) of subdivision (a) to update his or her registration every 90 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (B) of paragraph (1) of subdivision (a) shall update their registration every 90 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. [Emphasis added.]

Subdivision (g)(5), provides that:

Any person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, fails to verify his or her registration every 90 days as required pursuant to subparagraph (D) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

Accordingly, by adding additional timelines in which convicted sex offenders must register, section 290 of the test claim legislation defines a new crime. Under prior law, these convicted sex offenders had no duty to register in the proscribed time periods. Now, under section 290 of the test claim legislation, if they do not register or provide notification of a name change, the offender may be guilty of a misdemeanor, felony or continuing offense. Accordingly, the Commission finds that this portion of the test claim legislation creates a new crime.

Conclusion

Based on the foregoing, a convicted sex offender's "Duty to Register for New Crimes and Timelines" does not impose a reimbursable state mandate under article XIII B, section 6 of the California Constitution and Government Code section 17556, subdivision (g).

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¹⁰ Penal Code section 290, subdivision (f)(3), Statutes of 1996, Chapter 909.

PART 2 - REMAINING ISSUES PRESENTED BY THE TEST CLAIM LEGISLATION

Issue 1:

Is the test claim legislation a “program” within the meaning of article XIII B, section 6 of the California Constitution by carrying out either the governmental function of providing services to the public or imposing unique requirements on local law enforcement agencies?

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the test claim legislation must constitute a “program.” In *County of Los Angeles v. State of California*, the California Supreme Court defined the word “program,” within the meaning of article XIII B, section 6, as a program that carries out the governmental function of providing a service to the public, or laws, which to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.¹¹ In *Carmel Valley*, the court held that only one of these findings is necessary to trigger the applicability of article XIII B, section 6.¹²

To determine whether the test claim legislation carries out the governmental function of providing services to the public, it is necessary to define the program in which the test claim legislation operates.

California courts have continually held that police and fire protection are two of the most basic functions of local government and are peculiarly governmental in nature.¹³ In the present case, the test claim legislation concerns police protection, because it relates specifically to the registration of certain convicted sex offenders and public disclosure of their identity by local law enforcement agencies.

Accordingly, the Commission finds that test claim legislation is a “program” within the meaning of article XIII B, section 6 of the California Constitution, because it carries out the governmental function of providing police protection to the public.

Issue 2:

Is the test claim legislation a “new program or higher level of service” within the meaning of article XIII B, section 6 of the California Constitution?

To determine if a program is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.¹⁴

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¹¹ *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

¹² *Carmel Valley Fire Protection Dist., supra*, 190 Cal.App.3d at 537.

¹³ *Carmel Valley Fire Protection Dist., supra*, 190 Cal.App.3d 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.

¹⁴ *County of Los Angeles, supra* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist., supra* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

A breakdown of the required activities imposed on local law enforcement agencies is as follows:

- **Change in Existing Timelines to Register**

Prior law required every convicted sex offender of a specified crime to register in the jurisdiction where the offender resides within 14 days of coming into the applicable jurisdiction and to update the registration within 10 days of the offender's birthday.¹⁵ The test claim legislation shortened these deadlines to within 5 working days of when an offender enters the applicable jurisdiction, and to within 5 working days of the offender's birthday for annual updates.¹⁶

In addition, prior law required that the convicted sex offender register with the local law enforcement agency that the offender was last registered with in writing within 10 days of a change of address. Within three days after receipt of this information, the local law enforcement agency must forward a copy of the change of address or location to the Department of Justice. The Department of Justice shall forward the appropriate registration data to the local law enforcement agency or agencies having jurisdiction over the new place of residence or location.¹⁷ The test claim legislation is the same as prior law, except that the time period in which an offender has to report his or her change of address was changed from 10 days to 5 working days.

The mere shortening in time of registration deadlines does not change the level of service related to the above activities. Accordingly, there is no new program or higher level of service due to a change in the existing registration deadlines.

- **Violent Crime Information Network**

The test claim legislation states that "[t]he registering agency [local law enforcement agency] shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN)."¹⁸ There was no activity in prior law requiring local law enforcement agencies to submit registrations to VCIN. Therefore, this activity is a new program or higher level of service.

- **Removal of Registration for Decriminalized Conduct**

The test claim legislation exempts a person from registering as a sex offender under specified conditions if the offender was convicted of sodomy or oral copulation between consenting adults prior to January 1, 1976. The Department of Justice is required to remove these individuals from the Sex Offender Registry. Upon notification from the Department of Justice that an offender should be removed from the register, the local law enforcement agency must remove the offender's registration from its files within 30 days from receipt of notification.¹⁹ There was no activity in prior law providing for the decriminalization of this conduct. Therefore, the activity of removing an individual from a local law enforcement agency's file is a new program or higher level of service.

¹⁵ Penal Code section 290, subdivision (a), Statutes of 1984, Chapter 1419.

¹⁶ Penal Code section 290, subdivision (a)(1)(A), Statutes of 1996, Chapter 909.

¹⁷ Penal Code section 290, subdivision (e), Statutes of 1950, Chapter 70.

¹⁸ Penal Code section 290, subdivision (a)(1)(F), Statutes of 1998, Chapter 929.

¹⁹ Penal Code section 290, subdivision (a)(2)(F)(i), Statutes of 1997, Chapter 821.

- **Notice of Duty to Register Upon Release, Discharge or Parole**

Prior law provides that any person who, after the first day of August, 1950, is discharged or paroled from a jail, prison, school, road camp, or other institution where the person was confined or is released from a state hospital to which he was committed as a psychopath be informed of the duty to register by the official in charge of the place of confinement before the offender is released. The official in charge must advise the convicted sex offender of the duty to register and must also have the offender read and sign a form that states this duty was explained to the offender. The official in charge of the offender's release must also obtain the address of where the person expects to reside and will report the address to the Department of Justice and to the local law enforcement agency or agencies having jurisdiction over the place that the offender expects to reside. The official in charge must give one copy of the form to the offender, send one copy to the Department of Justice and one copy to the local law enforcement agency or agencies having jurisdiction over the offender.²⁰

The test claim legislation contains the same "Notice of Duty to Register" requirement as prior law, except that some non-substantive changes have been made including moving this section to 290, subdivision (b)(1) and (2). Nonetheless, since the test claim legislation contains the same notification requirement on local law enforcement agencies as prior law, there is no new program or higher level of service related to this activity.

- **Destruction of Records**

Prior law provided that all records specifically relating to the registration of sex offenders in the custody of the Department of Justice, local law enforcement agencies and other agencies or public officials be destroyed when the offender required to register has his or her records sealed under the procedures set forth in section 781 of the Welfare and Institutions Code.²¹

The test claim legislation contains the same "Destruction of Records" requirement as prior law, except that some non-substantive changes have been made including moving this section to 290, subdivision(d)(5). However, the requirement to destroy the records has remained the same. Thus, there is no new program or higher level of service related to this activity.

- **Pre-register**

The test claim legislation states that a convicted sex offender required to register under its provisions on or after January 1, 1998, shall also pre-register upon incarceration, placement or commitment or prior to release on probation. The pre-registering official shall be the admitting officer at the place of incarceration, placement or commitment or the probation officer if the person is to be released on probation. The pre-registration shall consist of a pre-registration statement in writing, signed by the person, giving information that shall be required by the Department of Justice, fingerprints and a photograph of the person.²² Prior law contained no provision for the activity of pre-registering. Thus, to the extent that a local law enforcement agency must pre-register convicted sex offenders, this activity is a new program or higher level of service.

²⁰ Penal Code section 290, subdivision (b), Statutes of 1950, Chapter 70.

²¹ Penal Code section 290, subdivision (d)(6).

²² Penal Code section 290, subdivision (e)(1)(A)(B)(C), Statutes of 1997, Chapter 821.

- **Contents of Registration Upon Release**

Prior law required that a convicted sex offender register upon release from incarceration, placement or commitment with the local law enforcement agency or agencies in which the offender resides. The registration must contain a statement in writing signed by the offender, giving information as may be required by the Department of Justice, fingerprints, a photograph of the offender and the license plate number of any vehicle owned by or registered in the name of the offender. Within three days of receiving this information, the registering law enforcement agency must forward this information to the Department of Justice.²³

In addition to the above requirements, the test claim legislation imposes some additional requirements on the convicted sex offender as well as local law enforcement agencies. With regard to the signed statement, in addition to the information required by the Department of Justice, the offender must also provide the name and address of his or her employer, and the address of the offender's place of employment if it is different from the employer's main address.²⁴ With regard to vehicle information, the convicted sex offender must also include information related to any vehicle regularly driven by the offender.²⁵ The offender must also be notified by the local law enforcement agency that in addition to the requirements of the test claim legislation, the offender may also have a duty to register in any other state where the offender may relocate.²⁶

Lastly, the test claim legislation requires that the offender provide the local law enforcement agency with adequate proof of residence, which is limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing the offender's name and address or any other information that the registering official believes is reliable. If the offender has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the offender shall advise the registering official and sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the offender has no residence, the offender shall be allowed to register. If the offender claims that he or she has a residence but does not have any proof of residence, the offender shall be allowed to register but shall furnish proof of residence within 30 days of the day the offender is allowed to register.²⁷

Although the above activities are directed at the convicted sex offenders, they also require various activities on local law enforcement agencies to the extent that local law enforcement agencies have to compile this information so that it can be sent to the Department of Justice. Thus, the compiling of this additional data is a new program or higher level of service.

²³ Penal Code section 290, Statutes of 1947, Chapter 1124. This provision, absent minor non-substantive changes, has remained the same since section 290 was originally enacted in 1947.

²⁴ Penal Code section 290, subdivision (e)(2)(A), Statutes of 1998, Chapter 930.

²⁵ Penal Code section 290, subdivision (e)(2)(C), Statutes of 1997, Chapter 927.

²⁶ Penal Code section 290, subdivision (e)(2)(D), Statutes of 1997, Chapter 927.

²⁷ Penal Code section 290, subdivision (e)(2)(E), Statutes of 1997, Chapter 927.

- **Notice of Reduction of Registration Period**

The test claim legislation requires that every convicted sex offender who was required to register before January 1, 1997, shall be notified whenever the offender next re-registers of the reduction in the registration period from 14 days to 5 working days. The notice must be in writing from the local law enforcement agency responsible for registering the individual.²⁸

Prior law required every convicted sex offender registering before January 1, 1985 to be notified of the reduction in the registration period from 30 to 14 days. Since the test claim legislation changes the registration period, a new notification is required.²⁹ Accordingly, the activity of notifying convicted sex offenders of the 14 to 5 day reduction in the timelines to register is a new program or higher level of service.

- **High-Risk Sex Offenders**

The test claim legislation provides that individuals considered to be high-risk offenders can be re-evaluated by the Department of Justice to be removed from the high-risk classification. This process does not involve law enforcement agencies except that the form for evaluation must be available at any sheriff's office. Thus, to the extent that a sheriff's office must maintain this form, there is a new program or higher level of service.³⁰

The test claim legislation also provides that the Department of Justice shall continually search its records and identify, on the basis of those records, high-risk offenders. Four times each year, the Department must provide each chief of police and sheriff in the state and any other designated law enforcement entity upon request information regarding the identity of high-risk sex offenders.

Department of Finance contends that although the Department of Justice must send this information to each chief of police and sheriff in the state, these law enforcement agencies can choose to disregard this information, because the test claim legislation does not impose any duty on them in this regard. This assertion is misplaced. As discussed below, in the "Community Notification" section, subdivision (n) of section 290 requires local law enforcement agencies, under certain circumstances, to disclose information about high-risk sex offenders to the public, which includes statistical information. Thus, to the extent that local law enforcement agencies need to compile this statistical data related to high-risk offenders, this activity is a new program or higher level of service.³¹

- **Community Notification**

The test claim legislation permits a local law enforcement agency to disclose information about a convicted sex offender³² or high-risk sex offender³³ under certain circumstances if a peace

²⁸ Penal Code section 290, subdivision (l), Statutes of 1997, Chapter 821.

²⁹ Penal Code section 290, subdivision (l), Statutes of 1985, Chapter 1474.

³⁰ Penal Code section 290, subdivision (n)(1)(G)(ii), Statutes of 1996, Chapter 908.

³¹ Penal Code section 290, subdivision (n)(2), Statutes of 1996, Chapter 908.

³² Penal Code section 290, subdivision (m), Statutes of 1996, Chapter 908.

³³ Penal Code section 290, subdivision (n), Statutes of 1996, Chapter 908.

officer reasonably suspects that a child or other person is at risk.. Specifically, the test claim legislation provides:

When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency **may**, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

- (A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.
- (B) Other community members at risk. [Emphasis added.]

This information generally includes information that the agency deems relevant and necessary to protect the public and may include the following:

1. The offender's full name.
2. The offender's known aliases.
3. The offender's gender.
4. The offender's race.
5. The offender's physical description.
6. The offender's photograph.
7. The offender's date of birth.
8. Crimes resulting in registration.
9. The offender's address, which must be verified prior to publication.
10. Description and license plate number of offender's vehicles or vehicles the offender is known to drive.
11. Type of victim targeted by the offender.
12. Relevant parole or probation conditions, such as one prohibiting contact with children.
13. Dates of crimes resulting in classification under the test claim legislation.
14. The date of release from confinement.³⁴

³⁴ Penal Code section 290, subdivision (m)(4), Statutes of 1996, Chapter 908.

Although it is a well-settled principle of statutory construction that the word “may” is ordinarily construed as permissive and “shall” is ordinarily construed as mandatory, there are situations in which “may” is interpreted to mean “shall.”³⁵ In *Los Angeles County v. State*,³⁶

the Third District Court of Appeal held:

The word “may” as used in a statute or constitution is often interpreted to mean “shall” or “must.” Such interpretation always depends largely, if not altogether, on the object sought to be accomplished by the law in which the word is used. It seems to be the uniform rule that, where the purpose of the law is to clothe public officers with power to be exercised for the benefit of third persons, or for the public at large – that is, where the public interest or private rights requires that the thing be done then the language, though permissive in form, is peremptory . . .

Since a peace officer is a “public officer,”³⁷ if a peace officer reasonably suspects that a child or another person is at risk from a sex offender or high-risk sex offender, the peace officer must notify certain members of the public that may be in danger from the sex offender. There was no activity in prior law related to community notification of sex offenders. Thus, the community notification activity is a new program or higher level of service.

- **CD ROM**

The test claim legislation states that on or before July 1, 1997, the Department of Justice shall provide a CD-ROM or other electronic medium containing information about certain sex offenders and shall update and distribute the CD-ROM or other electronic medium on a monthly basis to sheriff's departments in each county, municipal police departments of cities with a population of more than 200,000 and other law enforcement agencies. The local law enforcement agencies “may” obtain additional copies by purchasing a yearly subscription to the CD-ROM or other electronic medium from the Department of Justice for a yearly subscription fee and “may” make the CD-ROM or other electronic medium available for viewing by the public.³⁸

Like the Community Notification activity above, the use of the term “may,” though permissive in form, is peremptory. In fact, according to the legislative history, it was the legislative intent that the CD-ROM or other electronic medium shall be made available to the public.³⁹ Assembly Bill 1562 states that:

Knowing the identity of sex registrants empowers parents to protect their children from exposure to persons who might do them harm.
Likewise, adult victims would similarly be empowered. It deters sex

³⁵ *Common Cause of California v. Board of Supervisors of L.A. County* (1989) 49 Cal.3d 432..

³⁶ *Los Angeles County v. State* (1923) 64 Cal.App.290.

³⁷ Government Code section 195 and Evidence Code section 200.

³⁸ Penal Code section 290.4, subdivision (a)(4)(A), Statutes of 1996, Chapter 908.

³⁹ Assem. Bill No. 1562 (1995-1996 Reg. Sess.) Proposed Conference Report No. 1, August 27, 1996, page 2, paragraph 12.

offenders from re-offending by increasing public awareness of their proclivities, thereby discouraging them from contact with children.⁴⁰

Moreover, the California Department of Justice evaluated patterns of sex offenders and conducted a 15-year follow-up of sex offenders first arrested in 1973. The Department of Justice found:

An analysis of subsequent arrests over the 15-year period (1973-1988) found that nearly one-half (49.4%) were re-arrested for some type of offense and almost 20% (19.7%) for a subsequent sex offense. Sex offenders whose first arrest was for rape by force or threat had the highest recidivism rate, 63.4% for any offense and 25.5% for a subsequent offense. The high recidivist rate could be attributed, in part, to the anonymity of the sex offender.⁴¹

Accordingly, the test claim legislation requires that the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000 and other applicable law enforcement agencies provide the necessary equipment for the public to access the sex offender information provided by the Department of Justice on CD-ROM or another electronic medium. Prior law had no provision related to this activity. Thus, this activity is a new program or higher level of service.

- **Records Retention**

The test claim legislation requires local law enforcement agencies to maintain records of those persons requesting to view the CD-ROM or other electronic medium for a minimum of five years and to maintain records of the means and dates of dissemination for a minimum of five years related to the disclosure of high-risk offenders.⁴² There is no records retention activity under prior law related to CD-ROM or other electronic medium. Accordingly, the records retention activity is a new program or higher level of service.

Conclusion

Based on the foregoing, the following activities are a new program or higher level of service under article XIII B, section 6 of the California Constitution:

- Submission of Registered Sex Offender information to the Department of Justice's Violent Crime Information Network by Local Law Enforcement Agencies (a)(1)(F))
- Removal of Registration for Decriminalized Conduct (§290, subdivision (a)(2)(F)(i))
- Pre-register (§290, subdivision (e)(1)(A-C))
- Contents of Registration Upon Release (§290, subdivision (e)(2)(A-E))
- Notice of Reduction of Registration Period (§290, subdivision (l)(1))

⁴⁰ *Supra*, page 4, paragraph 3.

⁴¹ *Supra*, page 4, paragraph 4.

⁴² Penal Code section 290, subdivision (o), Statutes of 1996, Chapter 908.

- High-Risk Sex Offenders (§290, subdivision (n))
- Community Notification (§290, subdivision (m))
- CD ROM (§290.4, subdivision (4)(A-C))
- Records Retention (§290, subdivision (o))

However, the analysis must continue to determine if the above activities impose “costs mandated by the state,” under Government Code section 17514.

Issue 3:

Does the test claim legislation impose “costs mandated by the state” within the meaning of Government Code section 17514?

Under Government Code section 17514 a new program or higher level of service must impose “costs mandated by the state.” However, under Government Code section 17556, subdivision (c), the Commission **shall not** find “costs mandated by state” if the test claim legislation implemented a federal law.

Government Code section 17556, subdivision (c), provides that there are no “costs mandated by the state” when:

(c) The statute or executive order implemented a federal law or regulation **and** resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation. [Emphasis added.]

Government Code section 17513 defines “costs mandated by the federal government” as:

. . . any increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or regulation. “Costs mandated by the federal government” includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. “Costs mandated by the federal government” does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services **which may be implemented at the option of the state**, local agency, or school district. [Emphasis added.]

- **Federal Law**

History of the Federal Law

There are three federal enactments that concern the test claim legislation: the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Megan’s Law and the Pam Lychner Sexual Offender Tracking and Identification Act. The collective result of these

enactments is codified in 42 U.S.C. 14071-72 (referred to below as “section 14071”)⁴³ and represents the federal law in this matter. These three enactments are as follows:

1. The Wetterling Act, which was enacted by section 170101 of the Violent Crime Control and Law Enforcement Act of 1994,⁴⁴ encourages states to establish an effective sex offender registration system.
2. Megan’s Law,⁴⁵ which amended the provisions of the Wetterling Act, relates to the release of registration information.
3. The Lychner Act,⁴⁶ which makes further amendments to the Wetterling Act, contains provisions to ensure the nationwide availability of sex offender registration information to law enforcement agencies.

The federal Department of Justice issued guidelines for state compliance with the original version of the Wetterling Act⁴⁷ and has more recently published guidelines to implement Megan’s Law and clarify other issues concerning Wetterling Act compliance, or section 14071.⁴⁸

Overview of Section 14071

Section 14071 provides a financial incentive for states to establish 10 year registration requirements for persons convicted of certain crimes against minors and sexually violent offenses and to establish a more stringent set of registration requirements for a sub-class of highly dangerous sex offenders characterized as “sexually violent predators.” States that fail to establish such systems within three years (subject to a possible two year extension) face a 10% reduction in funding for HIV testing.⁴⁹

In order to determine if the federal exception applies to the test claim legislation, the Commission must first determine if the test claim legislation implemented section 14071 and resulted in “costs mandated by the federal government.” If so, the Commission must then determine if the test claim legislation exceeds the scope of section 14071.

• Findings

Did the Test Claim Legislation Implement Section 14071?

The legislative history of the test claim legislation shows that it was enacted to implement section 14071. Assembly Bill 1562 specifically states that the passage of the test claim legislation “will launch Megan’s Law in California and fulfill the requirements of the federal law.” “Failure to act would constitute non-compliance with the Jacob Wetterling Crimes Against

⁴³ 42 U.S.C.A. section 14072 is not relevant to the test claim as it specifically deals with the FBI database.

⁴⁴ 42 U.S.C.A. section 14071, Public Law 102-322, 108 Stat. 1796, 2038.

⁴⁵ 42 U.S.C.A. section 14071, Public Law 104-145, 110 Stat. 1345, May 17, 1996.

⁴⁶ 42 U.S.C.A. section 14071, Public Law 104-236, 110 Stat. 3096, 3097, October 3, 1996.

⁴⁷ 61 FR 15110 (issued April 4, 1996), Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexual Violent Offender Registration.

⁴⁸ 64 FR 572 (issued January 5, 1999) and 64 FR 3590 (issued January 22, 1999), Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexual Violent Offender Registration.

⁴⁹ 42 U.S.C.A. section 3756, subdivision (f).

Children and Sexually Violent Offender Registration Act and result in the loss of nearly \$5 million in ...funding.”⁵⁰

In addition, section 14071 specifically provides that states must comply/implement its provisions or lose funding for HIV testing. Section 14071 states that the Attorney General shall establish guidelines for state programs for certain individuals convicted of specified sexual offenses.⁵¹ As mentioned above, the Attorney General issued these guidelines in 1996 and revised and reissued them again in 1999. Section 14071 specifically outlines the provisions that a state registration program must contain⁵² and specifies the dates in which states must comply with section 14071 as well as the consequences if a state fails to comply with its provisions.⁵³

Accordingly, the Commission finds that the test claim legislation implemented section 14071. However, the analysis must continue to determine if the test claim legislation results in “costs mandated by the federal government.”

Does the Test Claim Legislation Result in Costs Mandated by the Federal Government?

“Costs mandated by the federal government” includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet a specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. However, “costs mandated by the federal government” does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services **which may be implemented at the option of the state, local agency or school district.**⁵⁴ [Emphasis added.]

In order to determine if the test claim legislation was “implemented at the option of the state,” California courts, including the California Supreme Court, have held that “[t]he test for determining whether there is a federal mandate is whether compliance with federal standards ‘is a matter of true choice,’ that is, whether participation in the federal program ‘is truly voluntary.’”⁵⁵ The *Hayes* court in following the California Supreme Court’s decisions in *City of Sacramento v. State of California (Sacramento II)*,⁵⁶ held that a “determination of whether compliance with a federal law is mandatory or optional must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to

⁵⁰ Assem. Bill No. 1562 (1995-1996 Reg. Sess.) Proposed Conference Report No. 1, August 27, 1996, pages 5 and 6.

⁵¹ 42 U.S.C.A., section 1407(a), Public Law 103-322, 108 Stat. 2038.

⁵² 42 U.S.C.A., section 1407(b), Public Law 103-322, 108 Stat. 2038.

⁵³ 42 U.S.C.A., section 1407(f)(1)(2), Public Law 103-322, 108 Stat. 2038.

⁵⁴ Government Code section 17513.

⁵⁵ *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1581; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76.

⁵⁶ *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.

participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance or withdrawal.”⁵⁷ Application of these factors in the present case is as follows:

- **Nature and Purpose of the Federal Program** - The federal legislation was enacted to provide the public with information regarding certain convicted sex offenders. The centerpiece of the test claim legislation, the registration and notification provisions related to convicted sex offenders, has its genesis in a New Jersey murder case. On July 29, 1994, Megan Kanka was raped and asphyxiated to death by Jesse Timmendequas, Megan's thirty-three year old neighbor. Unbeknownst to Megan's parents, Timmendequas was a convicted child molester living in a nearby home with two other convicted pedophiles. The brutal murder of this young girl shocked the nation, and catapulted the issue of sexually violent crimes against children onto a national stage.
- **Whether the Federal Statute Suggests an Intent to Coerce** – Although no monetary penalties would be assessed against the state for failure to implement section 14071, it would lose substantial funds for HIV testing of certain sex offenders. According to the test claim legislation, “[a] state that fails to implement the program as described in this section [the test claim legislation] shall not receive 10 percent of the funds that would otherwise be allocated to the State under section 3756 of this title.”⁵⁸ Section 3756 provides:

(a) States

Subject to subsection (f) of this section, of the total amount appropriated for this subchapter in any fiscal year, the amount remaining after setting aside the amount required to be reserved to carry out section 3761 of this title shall be set aside for section 3752 of this title and allocated to States as follows:

(1) \$500,000 or 0.25 percent, whichever is greater, shall be allocated to each of the participating States; and

(2) of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State bears to the population of all the States.⁵⁹

Subsection (f) provides for the testing of certain sex offenders for human immunodeficiency virus.⁶⁰

In addition, as discussed above, the legislative history of the test claim legislation shows that if California refused to implement section 14071, it would lose

⁵⁷ *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1582; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76.

⁵⁸ 42 U.S.C.A. section 1407(a), 108 Stat. 2038.

⁵⁹ 42 U.S.C.A. section 3756(a), 108 Stat. 2138.

⁶⁰ 42 U.S.C.A. section 3756(f), 108 Stat. 2138.

substantial funds for HIV testing. Specifically, Assembly Bill 1562 states that “[f]ailure to act would constitute non-compliance with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act and result in the loss of nearly \$5 million in ...funding.”⁶¹ Clearly, the Legislature believed that such a loss in funding was “substantial,” since it was the basis of compliance with section 14071.

Thus, although no monetary penalties would be assessed against the state for failure to implement section 14071, it would lose substantial funds for HIV testing of certain sex offenders.

- **When State and/or Local Participation Began** – Section 170101 of the Violent Crime Control and Law Enforcement Act was enacted on September 13, 1994. Congress amended and President Clinton signed the Wetterling Act portion of section 14071 in May of 1996. The test claim legislation was enacted by an “urgency statute” and became effective on September 25, 1996.
- **The Penalties, if any Assessed for Withdrawal or Refusal to Participate or Comply** – There are no penalties if a state fails to comply with the federal legislation. However, as mentioned above, failure to comply will result in a loss of federal funding for HIV testing for certain sex offenders.
- **Any Other Practical or Legal Consequence of Nonparticipation, noncompliance or withdrawal** - Practically speaking, California, like all the other states, had no choice but to comply with the federal legislation or lose substantial funding.

Based on the above factors, the Commission finds that the state had no “true choice” but to comply with the provisions of section 14071. Accordingly, the test claim legislation implemented a federal law and resulted in costs mandated by the federal government.⁶²

However, the federal exception does not apply to the extent that the test claim legislation mandates costs that exceed the mandate in that federal law or regulation.⁶³ Thus, the Commission must compare the test claim legislation to the federal legislation to determine which costs or activities exceed the federal mandate.

Does the Test Claim Legislation Exceed the Federal Mandate?

In order to determine if the test claim legislation exceeds section 14071, the Commission has compared the activities imposed by the test claim legislation to section 14071 below. However, before comparing the test claim legislation and section 14071, it should be noted that section 14071 was not intended to, and does not have the effect of, making states less free than they were under prior law to impose such requirements. Hence, section 14071’s standards constitute a floor for state programs, not a ceiling. States do not have to go beyond sections 14071’s

⁶¹ Assem. Bill No. 1562 (1995-1996 Reg. Sess.) Proposed Conference Report No. 1, August 27, 1996, pages 5 and 6.

⁶² Government Code section 17556, subdivision (c).

⁶³ *Ibid.*

minimum requirements to maintain eligibility for funding, but they may retain the discretion to do so. State programs often contain elements that are not required under section 14071.⁶⁴

Activities Imposed by the Test Claim Legislation	Federal Mandate Section 14071.
Violent Crime Information Network ⁶⁵	Section 14071 has no requirement that the state establish a Violent Crime Information System. Thus, this activity exceeds the federal mandate. ⁶⁶
Removal of Registration for Decriminalized Conduct ⁶⁷	Section 14071 has no provision related to the activity of removing a registration for decriminalized conduct. Thus, this activity exceeds the federal mandate.
Pre-register ⁶⁸	Section 14071 has no provision related to the activity of pre-registering convicted sex offenders. Thus, this activity exceeds the federal mandate.
Contents of Registration Upon Release ⁶⁹	The only activity in section 14071 related to the registration activities in the test claim legislation is the requirement that local law enforcement agencies advise a convicted sex offender of a possible duty to register in any other state where the offender resides. ⁷⁰ Thus, with the exception of this activity, section 14071 does not have a specific mandate related to the registration activities imposed by the test claim legislation.
Notice of Reduction of Registration Period ⁷¹	Section 14071 has no provision related to the notice activity. Thus, this activity exceeds the federal mandate

⁶⁴ 64 FR 572.

⁶⁵ Penal Code section 290, subdivision (a)(1)(F), Statutes of 1998, Chapter 929.

⁶⁶ 42 U.S.C.A. section 14071, subdivision (b)(2)(3)(4), 108 Stat. 2038.

⁶⁷ Penal Code section 290, subdivision (F)(i)(I)(II)(III), Statutes of 1997, Chapter 821.

⁶⁸ Penal Code section 290, subdivision (e)(1)(A)(B)(C), Statutes of 1997, Chapter 821.

⁶⁹ Penal Code section 290, subdivision (e)(2)(A)(B)(C)(D)(E), Statutes of 1997, Chapter 927.

⁷⁰ 42 U.S.C.A. section 14071, subdivision (b)(iii), Public Law 103-322, 108 Stat. 2038.

⁷¹ Penal Code section 290, subdivision (l), Statutes of 1997, Chapter 821.

High-Risk Sex Offenders ⁷²	Section 14071 has no provision related to the activities associated with high-risk sex offenders. Thus, this activity exceeds the federal mandate.
Community Notification ⁷³	Section 14071 provides that any local law enforcement agency “may” release relevant information about a convicted sex offender that is necessary to protect the public concerning a specific person required to register. ⁷⁴ In the context of this section, the use of the term “may,” though permissive in form, is peremptory. Thus, the community notification activity is a federal mandate and not a “cost mandated by the state.”
CD ROM ⁷⁵	Although section 14071 has no provision related to the CD-ROM activity, Department of Finance contends that this activity merely implements federal law, because 42 U.S.C.A. 14071, subdivision (e)(2), states that “the State or any agency authorized by the State shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section.” This contention is incorrect. Section 14071 does not require the relevant information to be released by CD ROM. Thus, this activity exceeds the federal mandate.
Records Retention ⁷⁶	Section 14071 has no provision related to the record retention activity. Thus, this activity exceeds the federal mandate.

In summary, the following activities imposed by the test claim legislation exceed section 14071, the federal mandate, and thus result in “costs mandated by the state:”

⁷² Penal Code section 290, subdivision (n)(1)(G)(ii)(2), Statutes of 1996, Chapter 908.

⁷³ Penal Code section 290, subdivision (m)(n), Statutes of 1996, Chapter 908.

⁷⁴ 42 U.S.C.A. section 14071, subdivision (b)(iii), Public Law 103-322, 108 Stat. 2038.

⁷⁵ Penal Code section 290.4, subdivision (a)(4)(A), Statutes of 1996, Chapter 908.

⁷⁶ Penal Code section 290, subdivision (o), Statutes of 1996, Chapter 908.

- **Violent Crime Information Network**

This activity requires a local law enforcement agency to submit sex offender registrations from its jurisdictions directly into the Department of Justice Violent Crime Information Network

- **Removal of Registration for Decriminalized Conduct**

This activity requires a local law enforcement agency to remove an offender's registration from its files within 30 days of receiving a notification to do so from the Department of Justice.

- **Pre-register**

This activity requires the admitting officer of a local law enforcement agency to pre-register a convicted sex offender but only if the local law enforcement agency is the place of incarceration. This pre-registration consists of a pre-registration statement in writing, signed by the person, giving information that is required by the Department of Justice, fingerprints and a current photograph of the offender.

- **Contents of Registration Upon Release**

A convicted sex offender has always had the duty to register upon release with the local law enforcement agency in which the offender will reside. While most of the activities related to this registration falls on the convicted sex offender, the following related activities are imposed on the registering local law enforcement agency:

1. The local law enforcement agency must ensure that the signed statement that a convicted sex offender must fill out upon registration contains the name and address of the offender's employer, and the address of the offender's place of employment if that is different from the employer's main address.
2. The local law enforcement agency must ensure that the convicted sex offender includes information related to any vehicle regularly driven by the offender on the registration.
3. The local law enforcement agency must ensure that the convicted sex offender upon registering has adequate proof of residence, which is limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the offender has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the local law enforcement agency shall provide the offender with a statement stating that fact.

- **Notice of Reduction of Registration Period**

This activity requires that convicted sex offenders who were required to register before January 1, 1997, shall be notified when the offender next re-registers of the reduction in the registration period was from 14 days to 5 working days. The one-time notice must be in writing from the local law enforcement agency responsible for registering the individual.

- **High-Risk Sex Offenders**

The test claim legislation imposes some new activities on specific local law enforcement agencies related to high-risk offenders. These activities are as follows:

1. Sheriffs' offices must make available to high-risk offenders a pre-printed form from the Department of Justice regarding re-evaluation by the Department of Justice to be removed from the high-risk classification.
2. A local law enforcement agency must maintain statistical information on high-risk offenders and photographs that it receives four times a year from the Department of Justice.

- **CD ROM**

This activity requires that the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000 and other applicable law enforcement agencies provide the necessary equipment for the public to access the sex offender information provided by the Department of Justice on CD-ROM or another electronic medium.

- **Records Retention**

This activity requires a local law enforcement agency to maintain records of those persons requesting to view the CD-ROM or other electronic medium for a minimum of five years and to maintain records of the means and dates of dissemination for a minimum of five years related to the disclosure of high-risk offenders.

Finally, the test claim legislation contains a sunset provision wherein it is only operative until January 1, 2004.

CONCLUSION

The Commission finds that Part 2 of the test claim legislation is a "program" within the meaning of article XIII B, section 6 of the California Constitution, because it carries out the governmental function of providing police protection to the public.

The Commission further finds that the following required activities, as outlined in more detail above, are a "new program or higher level of service" under article XIII B, section 6 of the California Constitution and result in "costs mandated by the state" within the meaning of Government Code section 17514:

- Submission of Registered Sex Offender information to the Department of Justice's Violent Crime Information Network by Local Law Enforcement Agencies (§290, subdivision (a)(1)(F))
- Removal of Registration for Decriminalized Conduct (§290, subdivision (a)(2)(F)(i))
- Pre-register (§290, subdivision (e)(1)(A-C))
- Contents of Registration Upon Release (§290, subdivision (e)(2)(A-E))
- Notice of Reduction of Registration Period (§290, subdivision (l)(1))
- High-Risk Sex Offenders (§290, subdivision (n))
- CD ROM (§290.4, subdivision (4)(A-C))
- Records Retention (§290, subdivision (o))

Lastly, the Commission finds that all other activities in the test claim legislation do not constitute a reimbursable state mandated program pursuant to article XIII B, section 6 of the California Constitution.

Accordingly, the Commission approves the test claim, in part, as outlined above.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 350, Sacramento, California 95814.

August 24, 2001, I served the:

RE: **Adopted Statement of Decision**
 Sex Offenders: Disclosure by Law Enforcement Officers, 97-TC-15
 County of Tuolumne, Claimant
 Penal Code Sections 290 and 290.4
 Statutes of 1996, Chapters 908 and 909
 Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821 and 822
 Statutes of 1998, Chapters 485, 550, 927, 928, 929 and 930

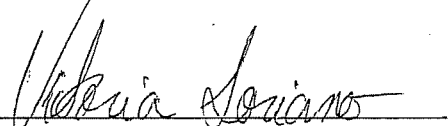
by placing a true copy thereof in an envelope addressed to:

Ms. Pamela Stone
DMG-MAXIMUS, Inc
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 24, 2001, at Sacramento, California.


VICTORIA SORIANO

Commission on State Mandates

List Date: 01/08/1998

Mailing Information Final Staff Analysis

Mailing List

Claim Number 97-TC-15 Claimant Claim of County of Tuolumne-Sheriff's Department

Subject Penal Code sections 290 and 290.4
908/96
Issue Sex Offenders: Disclosure by Law Enforcement Officers

Mr. Ted Buckley, Legal Advisor
Long Beach Unified School District

1515 Hughes Way Room 235
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FAX: (562) 997-8092

Interested Person

Mr. Allan Burdick,
MAXIMUS

4320 Auburn Blvd., Suite 2000
Sacramento CA 95841

Tel: (916) 485-8102
FAX: (916) 485-0111

Interested Person

Ms. Annette Chinn,
Cost Recovery Systems

705-2 East Bidwell Street #294
Folsom CA 95630

Tel: (916) 939-7901
FAX: (916) 939-7801

Interested Person

Ms. Jean Green, Fiscal Technician
County of Tuolumne
Sheriff's Department

28 N. Lower Sunset Drive
Sonora CA 95370

Tel: (209) 535-5815
FAX: (209) 533-5860

Interested Person

Mr. Glenn Haas, Bureau Chief (B-8)

State Controller's Office
Division of Accounting & Reporting
3301 C Street Suite 500
Sacramento CA 95816

Tel: (916) 445-8757
FAX: (916) 323-4807

State Agency

Claim Number

97-TC-15

Claimant

Claim of County of Tuolumne-Sheriff's
Department

Penal Code sections 290 and 290.4

Subject

908/96

Issue

Sex Offenders: Disclosure by Law Enforcement Officers

Mr. Leonard Kaye, Esq.,
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FAX: (213) 617-8106

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Interested Person

Mr. John P. Logger, SB-90 Coordinator
Auditor-Controller-Recorder
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San Bernardino CA 92415-0018

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FAX: (909) 386-8830

Mr. James Lombard, Principal Analyst (A-15)
Department of Finance

915 L Street, 6th Floor
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FAX: (916) 646-1300

Claim Number

97-TC-15

Claimant

Claim of County of Tuolumne-Sheriff's
Department

Penal Code sections 290 and 290.4

Subject

908/96

Issue

Sex Offenders: Disclosure by Law Enforcement Officers

Mr. Andy Nichols, Senior Manager
Centration, Inc.

8316 Red Oak, Suite 101
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Interested Person

Ms. Connie Peters (D-27),
Youth & Adult Correctional Agency

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Sacramento CA 95814

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Mr. Jim Spano,
State Controller's Office
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State Agency

Ms. Eleanor Watanabe,
Riverside Co. Sheriff's Office

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Riverside Ca 92502

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FAX: (916) 000-0000

Mr. David Wellhouse,
Wellhouse & Associates

9175 Kiefer Blvd Suite 121
Sacramento CA 95826

Tel: (916) 368-9244

FAX: (916) 368-5723

Interested Person

COMMISSION ON STATE MANDATES

NOTICE AND AGENDA ¹

State Capitol, Room 126
Sacramento, California

March 28, 2002

9:30 A.M. - PUBLIC SESSION

I. CALL TO ORDER AND ROLL CALL

II. APPROVAL OF MINUTES

Item 1 February 28, 2002

III. PROPOSED CONSENT CALENDAR (action)

Note: If there are no objections to any of the following action items, the Executive Director will include it on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.

IV. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

Note: Witnesses will be sworn in en masse before consideration of Item 2.

PROPOSED STATEMENT OF DECISION – TEST CLAIMS

Item 2 * *Community College District Budget and Financial Reports; Fiscal Management Reports, and Financial and Compliance Audits*
97-TC-10, 11, 12, Santa Monica Community College District, Claimant
Education Code Sections 84030, 84040 and 84040.5
Statutes of 1977, Chapters 36 and 936; Statutes of 1978, Chapter 207;
Statutes of 1979, Chapter 221; Statutes of 1980, Chapter 884; Statutes of
1981, Chapters 470, 471, 930 and 1178; Statutes of 1983, Chapter 1206;
Statutes of 1984, Chapters 609 and 1282; Statutes of 1986, Chapter 1486;
Statutes of 1987, Chapter 1025; Statutes of 1990, Chapter 1372; Statutes of
1994, Chapter 20; California Code of Regulations, Title 5, Sections 58300-
58301, 58303- 58308, 58310-58312, 58314, 58316, 58318, 59100, 59102,
59104, 59106, 59108, 59110, 59112, and 59114

V. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

Item 3 *Brown Act Reform, CSM 4469*
City of Newport Beach, Claimant
Statutes of 1993, Chapter 1136; Statutes of 1993, Chapter 1137; Statutes of
1993, Chapter 1138; Statutes of 1994, Chapter 32 and Consolidation with
Open Meetings Act, CSM 4257, Statutes of 1986, Chapter 641

¹ This public meeting notice is available on the Internet at <http://www.csm.ca.gov>.

- Item 4* *Sex Offenders: Disclosure by Law Enforcement Officers*, 97-TC-15
County of Tuolumne, Claimant
Penal Code Sections 290 and 290.4
Statutes of 1996, Chapters 908 and 909; Statutes of 1997, Chapters 17, 80,
817, 818, 819, 820, 821 and 822; Statutes of 1998, Chapters 485, 550, 927,
928, 929 and 930

B. ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES AMENDMENT

- Item 5 *Handicapped & Disabled Students*, 00-PGA-03 & 00-PGA-04
County of Los Angeles and County of Stanislaus, Claimants
Statutes of 1984, Chapter 1747; Statutes of 1985, Chapter 1274;
Sections 60000-60020, Title 2, California Code of Regulations, Division 9

VI. EXECUTIVE DIRECTOR'S REPORT (info)

- Item 6 Workload, Legislation, Next Agenda

VII. PUBLIC COMMENT

VIII. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526. (Closed Executive Session may begin at this time or may begin earlier on this day and reconvene at the end of the meeting.)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *County of San Bernardino v. State of California, et al.*, Case Number BS055882 in the Superior Court of the State of California, County of Los Angeles.
CSM Case No. 01-L-01 [*San Bernardino MIA*]
2. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number D038027, in the Appellate Court of California, Fourth Appellate District, Division 1.
CSM Case No. 01-L-13 [*Pupil Expulsions*]
3. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.
CSM Case No. 01-L-04 [*Physical Performance Tests*]
4. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number C037645, in the Appellate Court of California, Third Appellate District.
CSM Case No. 01-L-11 [*School Site Councils*]
5. *City of San Diego v. Commission on State Mandates, et al.*, Case Number D039095 in the Appellate Court of California, Fourth Appellate District.
CSM Case No. 01-L-15 [*Special Use; Eminent Domain*]

6. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 01-L-07 [*Domestic Violence*]
7. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number BS069611, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 01-L-08 [*SEMS*]
8. *County of San Bernardino v. Commission on State Mandates of the State of California et al.*, Case Number BS07309, in the Superior Court of the State of California, County of Los Angeles. Case No. 01-L-10 [*Property Tax Administration*]
9. *County of San Diego v. Commission on State Mandates, et al.*, Case Number D039471, in the Appellate Court of the State of California, County of San Diego, Fourth Appellate District. Case No. 01-L-16 [*San Diego MIA*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i)).

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action on report from the Personnel Sub-Committee

IX. REPORT FROM CLOSED EXECUTIVE SESSION

ADJOURNMENT

For information, contact:

Paula Higashi, Executive Director
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
(916) 445-0278 Fax

WORKSHOP

DEVELOPMENT OF REGULATIONS TO IMPLEMENT AB 1679

(Statutes of 1999, Chapter 643)

MARCH 28, 2002

1:30 to 2:30 P.M.

COMMISSION ON STATE MANDATES

CONFERENCE ROOM

980 NINTH STREET, SUITE 300

SACRAMENTO

Materials. Materials will be posted on the Commission website at <http://www.csm.ca.gov> by March 25, 2002. For information, contact Shirley Opie, Assistant Executive Director, at (916) 323-3562.

Special Accommodations. If you need special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodation, please contact the Commission Office at least five *working* days before the workshop.

ITEM 4

STAFF ANALYSIS CLAIMANT'S PROPOSED PARAMETERS AND GUIDELINES, AS MODIFIED BY STAFF

Penal Code Sections 290 and 290.4

Statutes of 1996, Chapters 908 and 909

Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821, and 822

Statutes of 1998, Chapters 485, 550, 927, 928, 929, and 930

*Sex Offenders: Disclosure by Law Enforcement Officers
("Megan's Law")*

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ITEM 4

STAFF ANALYSIS CLAIMANT'S PROPOSED PARAMETERS AND GUIDELINES, AS MODIFIED BY STAFF

Penal Code Sections 290 and 290.4

Statutes of 1996, Chapters 908 and 909

Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821, and 822

Statutes of 1998, Chapters 485, 550, 927, 928, 929, and 930

Sex Offenders: Disclosure by Law Enforcement Officers
("Megan's Law")

EXECUTIVE SUMMARY

The test claim legislation (Penal Code sections 290 and 290.4) concerns the registration of certain convicted sex offenders and public disclosure of their identity by local law enforcement agencies.

On August 23, 2001, the Commission on State Mandates (Commission) adopted its Statement of Decision partially approving the test claim. The Commission found that the following required activities are a new program or higher level of service under article XIII B, section 6 of the California Constitution and result in costs mandated by the state within the meaning of Government Code section 17514:

- Submission of Registered Sex Offender information to the Department of Justice's Violent Crime Information Network by Local Law Enforcement Agencies (Pen. Code, §290, subd. (a)(1)(F).)
- Removal of Registration for Decriminalized Conduct (Pen. Code, §290, subd. (a)(2)(F)(i).)
- Pre-register (Pen. Code, §290, subd. (e)(1)(A-C).)
- Contents of Registration Upon Release (Pen. Code, §290, subd. (e)(2)(A-E).)
- Notice of Reduction of Registration Period (Pen. Code, §290, subd. (l)(1).)
- High-Risk Sex Offenders (Pen. Code, §290, subd. (n).)
- CD ROM (Pen. Code, §290.4, subd. (4)(A-C).)
- Records Retention (Pen. Code, §290, subd. (o).)

The Commission concluded that all other activities in the test claim legislation did not constitute a reimbursable state mandated program pursuant to article XIII B, section 6 of the California Constitution.

Staff Analysis

The claimant submitted the proposed parameters and guidelines on August 24, 2001. Comments on the claimant's proposal were received from the Department of Finance (DOF), dated September 14, 2001, and the State Controller's Office (SCO), dated September 21, 2001. On February 15, 2002, the Commission issued draft parameters and guidelines and scheduled a pre-hearing conference/workshop to discuss the reimbursable activities and boilerplate language. On February 27, 2002, the Commission conducted the pre-hearing/workshop. The parties met and discussed the reimbursable activities and boilerplate language for local agencies, which includes sections V through IX, and the preamble to section IV. On March 7, 2002, the Commission issued revised draft parameters and guidelines for comment. No comments were received.

Staff reviewed the claimant's proposal and the comments received. Non-substantive, technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language.

In the Eligible Claimants section, community college districts were included pursuant to Penal Code section 290, subdivision (n)(1)(I).

In the Period of Reimbursement section, staff clarified that costs incurred for this mandate on or after July 1, 1996, for compliance with the mandate are reimbursable, *unless otherwise specified*. A footnote was inserted to indicate that the statutes became operative on different dates.

Several substantive modifications were made to the claimant's proposed parameters and guidelines in the Reimbursable Activities section:

- The claimant's proposed administrative activities were reclassified as one-time activities.
- The activity of training employees to implement the mandated activities was included.
- "Other activities to establish a single or multi agency system for law enforcement agencies to perform the mandated activities," as proposed by the claimant, was deleted.
- The activity related to developing policies, procedures, and manuals to implement the mandate was modified.
- A limitation was added to the proposed CD-ROM activity (Pen. Code, §290.4, subd. (4)(A-C).) Also, providing *security* for the public to access the sex offender information on CD-ROM was deleted.

Regarding boilerplate language, which includes sections V through IX and the preamble to section IV, staff modified the language as discussed in the staff analysis.

Staff Recommendation

Staff recommends that the Commission adopt the claimant's proposed parameters and guidelines, as modified by Commission staff, beginning on page 9.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

Claimant

County of Tuolumne

Chronology

08/23/01 Commission on State Mandates (Commission) adopted Statement of Decision¹
08/24/01 Claimant submitted Proposed Parameters and Guidelines²
09/14/01 The Department of Finance (DOF) submitted comments³
09/21/01 The State Controller's Office (SCO) submitted comments⁴
02/15/02 Commission issued draft parameters and guidelines⁵
02/27/02 Commission conducted a pre-hearing conference on reimbursable activities and a boilerplate language workshop
03/07/02 Commission issued revised draft parameters and guidelines⁶
03/18/02 Commission issued staff analysis

Summary of the Mandate

The test claim legislation (Penal Code sections 290 and 290.4) concerns the registration of certain convicted sex offenders and public disclosure of their identity by local law enforcement agencies. Section 290 specifically relates to the registration of these sex offenders when they are released from incarceration, when they move or change their temporary or permanent residence, or when they update their registration on an annual basis. Section 290 also allows local law enforcement agencies to disclose the identities of sex offenders to the public when a peace officer reasonably suspects that it is necessary to protect the public. Section 290.4 requires the Department of Justice to continually compile and maintain information regarding the identity of convicted sex offenders and to establish a "900" telephone number and CD-ROM program for public access of this information. The Department of Justice must distribute the information obtained on convicted sex offenders by CD-ROM or other electronic medium to local law enforcement agencies who in turn "may" then provide public access to the information. However, municipal police departments of cities with a population of less than 200,000 are exempt from this requirement.

On August 23, 2001, the Commission adopted its Statement of Decision partially approving the test claim. The Commission found that the following required activities are a new program or higher level of service under article XIII B, section 6 of the California Constitution and result in costs mandated by the state within the meaning of Government Code section 17514:

¹ Exhibit A

² Exhibit B

³ Exhibit C

⁴ Exhibit D

⁵ Exhibit E

⁶ Exhibit F

- Submission of Registered Sex Offender information to the Department of Justice's Violent Crime Information Network by Local Law Enforcement Agencies (Pen. Code, §290, subd. (a)(1)(F).)
- Removal of Registration for Decriminalized Conduct (Pen. Code, §290, subd. (a)(2)(F)(i).)
- Pre-register (Pen. Code, §290, subd. (e)(1)(A-C).)
- Contents of Registration Upon Release (Pen. Code, §290, subd. (e)(2)(A-E).)
- Notice of Reduction of Registration Period (Pen. Code, §290, subd. (l)(1).)
- High-Risk Sex Offenders (Pen. Code, §290, subd. (n).)
- CD ROM (Pen. Code, §290.4, subd. (4)(A-C).)
- Records Retention (Pen. Code, §290, subd. (o).)

The Commission found that all other activities in the test claim legislation did not constitute a reimbursable state mandated program pursuant to article XIII B, section 6 of the California Constitution.

Staff Analysis

Staff reviewed the claimant's proposal and the comments received. Non-substantive, technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language.

The claimant's proposed parameters and guidelines were modified, as discussed below:

II. Eligible Claimants

The claimant's proposal includes counties, cities, and cities and counties as eligible claimants. The SCO suggested that community colleges be included pursuant to the definition of a "designated law enforcement entity" in Penal Code section 290, subdivision (n)(1)(I). Specifically, Penal Code section 290, subdivision (n)(1)(I), states:

"Designated law enforcement entity" means any of the following: municipal police department; sheriff's department; ...or the police department of any campus of the University of California or California State University, or *community college*. (Emphasis added.)

Accordingly, this section was modified to include community college districts as an eligible claimant.

III. Period of Reimbursement

The claimant filed the test claim for this mandate on December 30, 1997. Thus, the claimant's proposal identifies a reimbursement period beginning on or after July 1, 1996. However, because of the different operative dates of each statute, the reimbursement period for some activities begin on a different date. Therefore, staff clarified that costs incurred for this mandate on or after July 1, 1996, for compliance with the mandate are reimbursable, *unless otherwise specified*. A footnote was also inserted to indicate that the statutes became operative on different dates.

Additionally, the SCO suggested that this section specify that Penal Code section 290.4 is only operative until January 1, 2004. To be consistent with the above discussion about the different operative dates, the reimbursement period for Penal Code section 290.4 was added to section IV. Reimbursable Activities.

IV. Reimbursable Activities

The following substantive modifications were made to the claimant's proposed reimbursable activities:

- The claimant's proposal describes reimbursable activities for administrative costs, one-time costs, and on-going costs. The SCO suggested that the activities should be classified as either one-time or on-going. Staff reclassified the administrative activities as one-time activities.
- Staff included the activity of training employees to implement the mandated activities. Training constitutes a reasonable method of complying with the mandated activities.⁷ Training was classified as a one-time activity for each employee who must implement the reimbursable activities listed in section IV, activities 2 through 13, of these parameters and guidelines.
- The claimant's proposal includes "other activities to establish a single or multi agency system for law enforcement agencies to perform the mandated activities." Staff finds that this activity goes beyond the scope of the mandate. In addition, the phrase "other activities" is overbroad because reimbursable activities must be specifically defined in parameters and guidelines. Therefore, this activity was deleted.
- The claimant's proposal also includes the activity to develop, update, and implement internal policies, procedures, and manuals as necessary to implement the mandate. Staff finds that there is no evidence in the record to support the on-going activity of updating policies and procedures. Therefore, this is a one-time activity. It was modified as follows: "Develop internal policies, procedures, and manuals to implement *Sex Offenders: Disclosure by Law Enforcement Officers* ("Megan's Law").

The claimant also proposed the following on-going activity:

12. Provide the necessary equipment, staff assistance, and security for the public to access the sex offender information provided by the Department of Justice on CD-ROM or other electronic medium, and obtaining information regarding individuals requesting access to the CD-ROM as required by the Department of Justice or state law.

Staff finds that obtaining information from individuals requesting access to the CD-ROM and providing staff assistance for the public to access the sex offender information constitutes reasonable methods of complying with the mandated activities.⁸ However, staff finds that providing security goes beyond the scope of the mandate. Therefore, "and security" was deleted from this activity.

⁷ California Code of Regulations, title 2, section 1183.1.

⁸ See footnote 7.

For purposes of consistency with statutory language, staff also deleted "or state law."

In addition, the Statement of Decision states:

- CD-ROM

This activity requires that the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000 and other applicable law enforcement agencies provide the necessary equipment for the public to access the sex offender information provided by the Department of Justice on CD-ROM or another electronic medium.⁹

Therefore, staff added the limitation "For sheriff's departments in each county, municipal police departments of cities with a population of more than 200,000, and police departments or community college districts," to clarify that municipal police departments of cities with a population of less than 200,000 are exempt from this requirement, pursuant to Penal Code section 290.4, subdivision (a)(4)(A).

The following on-going activity was also proposed by the claimant:

13. Maintain records of those persons requesting access to the information contained within the CD-ROM or other electronic medium for a minimum of five years, and costs of destruction of such records at the end of such time. Additionally, a record of the means and dates of dissemination of information regarding high-risk offenders must be maintained for a minimum of five years, and costs of destruction at the end of such time.

This activity is required by Penal Code section 290, subdivision (o). Neither the statute nor the statement of decision provides for costs of destruction of records. However, staff finds that it constitutes a reasonable method of complying with the mandated activities.¹⁰ Therefore, the claimant's proposal was not changed.

Sections V through IX

Regarding boilerplate language, which includes sections V through IX and the preamble to section IV, the claimant concurred with the language recently adopted for school districts except for the sections discussed below:

V. Claim Preparation and Submission

A. Direct Cost Reporting, 3. Contracted Services

At the February 27 boilerplate language workshop, the claimant suggested that the following be added to this section: "If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed." The SCO agreed with this proposal. Staff included the language accordingly.

Also, the SCO suggested that the actual contract and the invoices should be included with the claim. The claimant argued that the submittal can become bulky. After some discussion, the

⁹ Exhibit A, bates page 55.

¹⁰ See footnote 7.

parties agreed that contract consultant and attorney invoices shall be submitted with the claim, along with a description of the contract scope of services. Staff modified the language accordingly.

A. Direct Cost Reporting, 6. Training

In this section, the claimant proposed adding: "This data, if too voluminous to be included with the claim, shall be maintained by the local agency." The SCO stated that this sentence was unnecessary because the Supporting Data section explains that costs claimed must be traceable to source documents and that claims are subject to audit. The claimant noted that the Supporting Data section requires claimants to maintain data, but not submit data. Therefore, after further discussion, the parties agreed that if the data was too voluminous to be included with the claim, then it may be reported in a summary. Staff included the language accordingly, noting that supporting data must be maintained as described in Section VI.

B. Indirect Cost Rates

The claimant noted that the language recently adopted for schools is too ambiguous. The claimant requested that its original proposal for this section be reinstated because it provides detailed information and may be helpful to readers. The SCO concurred. Therefore, staff did not modify the claimant's proposal.

In this case, community college districts are also eligible claimants. Staff added language for community colleges accordingly.

Staff Recommendation

Staff recommends that the Commission adopt the claimant's proposed parameters and guidelines, as modified by Commission staff, beginning on page 9.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

CLAIMANT'S PROPOSED PARAMETERS AND GUIDELINES, AS MODIFIED BY STAFF

Penal Code Sections 290 and 290.4

Statutes of 1996, Chapters 908 and 909

Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821, and 822

Statutes of 1998, Chapters 485, 550, 927, 928, 929, and 930

Sex Offenders: Disclosure by Law Enforcement Officers ("Megan's Law")

I. SUMMARY OF THE MANDATE

~~Penal Code sections 290 and 290.4 require law enforcement officers to disclose information regarding sex offenders in an effort to protect the public. Under specified circumstances, the information provided may include the identities and location of these sex offenders, and require notification to potential victims. The statutes require local law enforcement agencies to provide this information via electronic medium.~~

The test claim legislation (Penal Code sections 290 and 290.4) concerns the registration of certain convicted sex offenders and public disclosure of their identity by local law enforcement agencies. Section 290 specifically relates to the registration of these sex offenders when they are released from incarceration, when they move or change their temporary or permanent residence, or when they update their registration on an annual basis. Section 290 also allows local law enforcement agencies to disclose the identities of sex offenders to the public when a peace officer reasonably suspects that it is necessary to protect the public. Section 290.4 requires the Department of Justice to continually compile and maintain information regarding the identity of convicted sex offenders and to establish a "900" telephone number and CD-ROM program for public access of this information. The Department of Justice must distribute the information obtained on convicted sex offenders by CD-ROM or other electronic medium to local law enforcement agencies who in turn "may" then provide public access to the information. However, municipal police departments of cities with a population of less than 200,000 are exempt from this requirement.

On July 26, 2001 August 23, 2001, the Commission on State Mandates (Commission) adopted its Statement of Decision that partially approving the test claim, legislation constitutes a reimbursable state mandated program upon local governments within the meaning of Article XIII B, Section 6, of the California Constitution and Government Code, Section 17514. The Commission found that the following required activities are a "new program or higher level of service" under article XIII B, section 6 of the California Constitution and result in "costs mandated by the state" within the meaning of Government Code section 17514:

- Submission of Registered Sex Offender information to the Department of Justice's Violent Crime Information Network by Local Law Enforcement Agencies (Pen. Code, §290, subd. (a)(1)(F).)
- Removal of Registration for Decriminalized Conduct (Pen. Code, §290, subd. (a)(2)(F)(i).)
- Pre-register (Pen. Code, §290, subd. (e)(1)(A-C).)
- Contents of Registration Upon Release (Pen. Code, §290, subd. (e)(2)(A-E).)
- Notice of Reduction of Registration Period (Pen. Code, §290, subd. (l)(1).)
- High-Risk Sex Offenders (Pen. Code, §290, subd. (n).)
- CD ROM (Pen. Code, §290.4, subd. (4)(A-C).)
- Records Retention (Pen. Code, §290, subd. (o).)

Lastly, the Commission found that all other activities in the test claim legislation did not constitute a reimbursable state mandated program pursuant to article XIII B, section 6 of the California Constitution.

II. ELIGIBLE CLAIMANTS

Counties, cities, and cities and counties are eligible claimants. Any county, city, city and county, or community college district, that has incurred increased costs as a direct result of this mandate is eligible to claim reimbursement of these costs, except as limited in Section IV, activity 12.

III. PERIOD OF REIMBURSEMENT

Section 17551 of the Government Code section 17551, prior to its amendment by Statutes of 1998, Chapter 681, (effective September 22, 1998), stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this mandate was filed on December 30, 1997. Therefore, costs incurred are eligible for reimbursement on or after July 1, 1996-, for compliance with the mandate are reimbursable, unless otherwise specified below.¹

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code, section 17564.

¹ The statutes have different operative dates, therefore the reimbursement period for some activities may begin on a different date.

IV. REIMBURSABLE ACTIVITIES

~~All direct and indirect costs of labor, materials, supplies, services, training and travel for the performance of~~ For each eligible claimant, the following activities are eligible for reimbursement:

~~A. Administrative Costs~~ One-Time Activities

1. Train staff on implementing the reimbursable activities listed in Section IV, activities 2 through 13, of these parameters and guidelines. (One-time activity per employee.)
2. Developing, updating and implementing internal policies, procedures, and manuals as necessary to implement *Sex Offenders: Disclosure by Law Enforcement Officers* ("Megan's Law").
- ~~2. Other activities to establish a single or multi agency system for law enforcement agencies to perform the mandated activities.~~

~~B. One-Time Costs~~

3. ~~Provide a~~ Notify iocation to every registered sex offender convicted prior to January 1, 1997, within the claimant's jurisdiction of the reduction in the time to register or reregister from 14 days to 5 days. (Pen. Code, § 290, subd. (1)(1).)² (Reimbursement period begins October 8, 1997.)

~~CB. On-Going Costs~~ Activities

4. Developing, collecting, and transmitting sex offender registrations from the local jurisdiction directly into the Department of Justice Violent Crime Information Network. (Pen. Code, § 290, subd. (a)(1)(F).)³ (Reimbursement period begins January 1, 1999.)
5. Removal of a sex offender's registration from the local jurisdiction's files within 30 days of receiving notice to do so from the Department of Justice. (Pen. Code, § 290, subd. (a)(2)(F)(i).)⁴ (Reimbursement period begins October 8, 1997.)
6. If the local law enforcement agency is the current place of incarceration, the pre-registration of a convicted sex offender, including the obtaining of a current photograph and fingerprints of the offender as well as a written statement relaying information as is required by the Department of Justice. Notify iocation to the sex offender as acknowledgement of the information contained within the pre-registration statement. (Pen. Code, § 290, subd. (e)(1)(A-C).)⁵ (Reimbursement period begins October 8, 1997.)

² As amended by Statutes of 1997, chapter 821, an urgency statute effective October 8, 1997.

³ As added by Statutes of 1998, chapter 929.

⁴ As added by Statutes of 1997, chapter 821.

⁵ As added by Statutes of 1997, chapter 821.

7. ~~Verify~~ that the sex offender's signed statement contains the name and address of the offender's employer, and the address of the offender's place of employment if it is different from the employer's main address. (Pen. Code, § 290, subd. (e)(2)(A).)⁶ (Reimbursement period begins October 8, 1997.)
8. ~~Verify~~ that the offender's registration includes information related to any vehicle regularly driven by the offender, including license number, make, model, and such other information as may be requested by the Department of Justice. (Pen. Code, § 290, subd. (e)(2)(C).)⁷ (Reimbursement period begins October 8, 1997.)
9. ~~Verify~~ that the convicted sex offender has adequate proof of residence, as determined by the Department of Justice; proof of residence is currently limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents, or any other information that the registering official believes is reliable. If the offender does not have a residence, and no reasonable expectation of obtaining a residence in the foreseeable future, then the local law enforcement agency shall obtain a statement to that effect from the sex offender. (Pen. Code, § 290, subd. (e)(2)(E).)⁸ (Reimbursement period begins January 1, 1999.)
10. Provide to high-risk sex offenders a printed form from the Department of Justice regarding reevaluation in order to be removed from the high-risk classification. (Pen. Code, § 290, subd. (n)(1)(G)(ii).)⁹ (Reimbursement period begins September 25, 1996.)
11. Maintain such photographs and statistical information concerning high-risk sex offenders as is received quarterly from the Department of Justice. (Pen. Code, § 290, subd. (n)(2).)¹⁰ (Reimbursement period begins September 25, 1996.)
12. For sheriff's departments in each county, municipal police departments of cities with a population of more than 200,000, and police departments or community college districts, to provide the necessary equipment, and staff assistance and security for the public to access the sex offender information provided by the Department of Justice on CD-ROM or other electronic medium, and to obtaining information regarding from individuals requesting access to the CD-ROM as required by the Department of Justice or state law. (Pen. Code, § 290.4, subd. (a)(4)(A).)¹¹ (Reimbursement period: September 25, 1996 through December 31, 2003.)

⁶ As added and amended by Statutes of 1997, chapter 821.

⁷ As added and amended by Statutes of 1997, chapter 821.

⁸ As added by Statutes of 1998, chapters 928 and 929.

⁹ As added by Statutes of 1996, chapter 908, an urgency statute effective September 25, 1996.

¹⁰ As added by Statutes of 1996, chapter 908.

¹¹ As added by Statutes of 1996, chapter 908. Penal Code section 290.4 contains a sunset provision wherein it is only operative until January 1, 2004.

13. Maintain records of those persons requesting access to the information contained within the CD-ROM or other electronic medium for a minimum of five years, and costs of destruction of such records at the end of such time. Additionally, a record of the means and dates of dissemination of information regarding high-risk offenders must be maintained for a minimum of five years, and costs of destruction at the end of such time. (Pen. Code, § 290, subd. (o).)¹² *(Reimbursement period begins October 8, 1997.)*

V. CLAIM PREPARATION AND SUBMISSION

~~Each reimbursement~~ Claims for reimbursement this mandate must be timely filed, and identify eEach of the following cost elements for which reimbursement is claimed under this mandate. Claimed costs must be identified to for each reimbursable activity identified in Section IV of this document.

SUPPORTING DOCUMENTATION

~~Claimed costs shall be supported by the following cost element information:~~

A. Direct Costs Reporting

~~Direct costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions. those costs incurred specifically for the reimbursable activities. Direct costs that are eligible for reimbursement are:~~

1. Salaries and Benefits

~~Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity, the productive hourly rate, and related employee benefits.~~

~~Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.~~

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

¹² As amended by Statutes of 1997, chapter 821.

2. Materials and Supplies

~~Expenditure claims are limited to those that can be identified as direct costs of this mandate. List the costs of the materials and supplies consumed specifically for the purposes of this mandate. Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting cash discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on an appropriate and recognized method of costing, consistently applied.~~

3. Contracted Services

~~Contracted services for participation of employer representatives in contract negotiation planning sessions will be reimbursed. Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.~~

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

4.5. Travel

~~Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points and travel costs.~~

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

5.6. Training

~~The cost of training an employee to perform the mandated activities is eligible for reimbursement. Identify the employee(s) by name or job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging and per diem. This data, if too voluminous to be included with the claim, shall be maintained by the local agency.~~

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services. This data, if too voluminous to be included with the claim, may be reported in a summary. However, supporting data must be maintained as described in Section VI.

B. Indirect Costs Rates

Indirect costs are ~~defined as~~ costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Cities and Counties

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

Community Colleges

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the OMB Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. SUPPORTING DATA

A. Source Documents

For auditing purposes, all incurred costs claimed shall must be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of their validity of such costs and their relationship to the state mandated program reimbursable activities. Documents may include, but are not limited to, worksheets, employee time records or time logs, cost allocation reports (system generated), invoices, receipts, purchase orders, contracts, agendas, training packets with signatures and logs of attendees, calendars, declarations, and data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements.

B. Record Keeping

All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code, section 17558.5, subdivision (a). Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the State Controller no later than two years after the end of the calendar year in which the

reimbursement claim is filed or last amended.* See the State Controller's claiming instructions regarding retention of required documentation during the audit period.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a direct result of the subject mandate same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, ~~federal funds collected~~, federal funds and other state funds shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

IX. PARAMETERS AND GUIDELINES AMENDMENTS

Parameters and guidelines may be amended pursuant to Title 2, California Code of Regulations section 1183.2.

* This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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August 24, 2001

Ms. Pamela Stone
DMG-MAXIMUS, Inc
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

State Agencies and Interested Parties (See Attached Mailing List)

RE: Adopted Statement of Decision
Sex Offenders: Disclosure by Law Enforcement Officers, 97-TC-15
County of Tuolumne, Claimant
Penal Code Sections 290 and 290.4
Statutes of 1996, Chapters 908 and 909
Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821 and 822
Statutes of 1998, Chapters 485, 550, 927, 928, 929 and 930

Dear Ms. Pamela Stone:

The Commission on State Mandates adopted the attached Statement of Decision on August 23, 2001. This decision is effective on August 24, 2001.

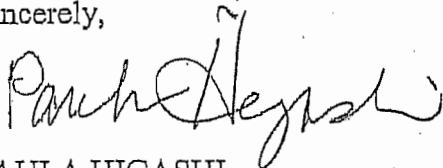
State law provides that reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program; approval of a statewide cost estimate; a specific legislative appropriation for such purpose; a timely-filed claim for reimbursement; and subsequent review of the claim by the State Controller's Office. Following is a description of the responsibilities of all parties and the Commission during the parameters and guidelines phase.

- **Claimant's Submission of Proposed Parameters and Guidelines.** Pursuant to Government Code 17557 and Title 2, CCR sections 1183.1 et seq. (the regulations), the claimant is responsible for submitting proposed parameters and guidelines by September 24, 2001. See Government Code section 17557 and Title 2, CCR sections 1183.1 et seq. for guidance in preparing and filing a timely submission.
- **Review of Proposed Parameters and Guidelines.** Within ten days of receipt of completed proposed parameters and guidelines, the Commission will send copies to the Department of Finance, Office of the State Controller, affected state agencies, and interested parties who are on the enclosed mailing list. All recipients will be given an opportunity to provide written comments or recommendations to the Commission within 15 days of service. The claimant and other interested parties may submit written rebuttals. See CCR section 1183.11.

- **Adoption of Parameters and Guidelines.** After review of the proposed parameters and guidelines and all comments, Commission staff will recommend the adoption of the claimant's proposed parameters and guidelines or adoption of an amended, modified, or supplemented version of the claimant's original submission. See CCR section 1183.12.

Please contact Nancy Patton at (916) 323-3562 if you have any questions.

Sincerely,



PAULA HIGASHI

Executive Director

Enclosure: Adopted Statement of Decision

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Penal Code Sections 290 and 290.4 Statutes of 1996, Chapters 908 and 909; Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821 and 822; Statutes of 1998, Chapters 485, 550, 927, 928, 929 and 930

Filed on December 30, 1997 and Amended on July 14, 1999;

By County of Tuolumne; Claimant.

NO. CSM 97-TC-15

*Sex Offenders: Disclosure by Law
Enforcement Officers*

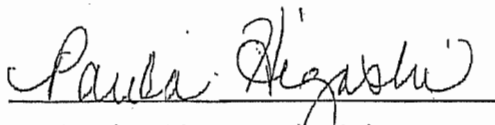
STATEMENT OF DECISION
PURSUANT TO GOVERNMENT CODE
SECTION 17500 ET SEQ.; TITLE 2,
CALIFORNIA CODE OF
REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted on August 23, 2001)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on August 24, 2001.


Paula Higashi, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Penal Code Sections 290 and 290.4

Statutes of 1996, Chapters 908 and 909;
Statutes of 1997, Chapters 17, 80, 817, 818,
819, 820, 821 and 822; Statutes of 1998,
Chapters 485, 550, 927, 928, 929 and 930

Filed on December 30, 1997 and Amended on
July 14, 1999;

By County of Tuolumne, Claimant.

NO. CSM 97-TC-15

*Sex Offenders: Disclosure by Law
Enforcement Officers*

STATEMENT OF DECISION
PURSUANT TO GOVERNMENT CODE
SECTION 17500 ET SEQ.; TITLE 2,
CALIFORNIA CODE OF
REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted on August 23, 2001)

STATEMENT OF DECISION

On July 26, 2001, the Commission on State Mandates (Commission) heard this test claim during a regularly scheduled hearing. Pamela Stone, Allan Burdick and Lieutenant John Steely appeared on behalf of claimant. James Lombard and Tom Lutzenberger appeared for the Department of Finance.

At the hearing, oral and documentary evidence was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a reimbursable state mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law.

The Commission, by a vote of 5 to 2, approved, in part, the test claim.

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BACKGROUND

The test claim legislation (Penal Code sections 290 and 290.4¹) concerns the registration of certain convicted sex offenders and public disclosure of their identity by local law enforcement agencies. Section 290 specifically relates to the registration of these sex offenders when they are released from incarceration, when they move or change their temporary or permanent residence or when they update their registration on an annual basis. Section 290 also allows local law enforcement agencies to disclose the identities of sex offenders to the public when a peace officer reasonably suspects that it is necessary to protect the public. Section 290.4 requires the Department of Justice to continually compile and maintain information regarding the identity of convicted sex offenders and to establish a "900" telephone number and CD-ROM program for public access of this information. The Department of Justice must distribute the information obtained on convicted sex offenders by CD-ROM or other electronic medium to local law enforcement agencies who in turn "may" then provide public access to the information. However, municipal police departments of cities with a population of less than 200,000 are exempt from this requirement.

Claimant's Position

Claimant contends that the test claim legislation imposes a reimbursable state mandate for the following activities:

1. Registration (§290, subdivision (a))
2. Record Retention (§290, subdivision (o))
3. Reporting to the Department of Justice (§290, subdivisions (b)(2), (e)(3) and (f)(1))
4. Records Destruction (§290, subdivision (d)(5))
5. Notification of Change of Address (§290, subdivision (f))
6. Notice of Prohibited Conduct (§290, subdivision (l)(1))
7. Disclosure of Information to the Public (§290, subdivision (m))
8. Public Access to CD-ROM & File Maintenance (§290.4, subdivision (a)(4)(A))

Department of Finance's Position

Department of Finance concedes that the test claim legislation may result in additional costs to local law enforcement agencies. Nonetheless, Department of Finance contends that these costs are not reimbursable, because the test claim legislation results in "costs mandated by the federal government." Specifically, Department of Finance asserts that the test claim legislation does no more than implement federal law relating to the public disclosure of the identity of certain sex offenders. Department of Finance contends:

1. Section 17556(c) of the Government Code provides that the Commission on State Mandates shall not find a reimbursable mandate in a statute or executive order if the statute or executive order implemented a federal law or regulation and resulted in "costs mandated by the federal

¹ All further statutory references are to the Penal Code unless otherwise indicated.

government," unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

2. Section 17513 of that Code defines "costs mandated by the federal government" as "...Any increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or regulation." "Costs mandated by the federal government" includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. "Costs mandated by the federal government" does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the option of the state, local agency, or school district.

COMMISSION'S FINDINGS

In order for a statute or an executive order to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514, the statutory language must first direct or obligate an activity or task upon local governmental agencies. If the statutory language does not direct or obligate local agencies to perform a task, then compliance with the test claim statute or executive order is within the discretion of the local agency and a reimbursable state mandated program does not exist.

In addition, the required activity or task must constitute a new program or create a higher level of service over the former required level of service. The California Supreme Court has defined the word "program," subject to article XIII B, section 6 of the California Constitution, as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the new program or increased level of service must impose "costs mandated by the state."²

The analysis is divided into two parts. Part 1 concerns new crimes and new timelines that an individual must register for as a convicted sex offender with the local law enforcement agency. Part 2 relates to the remaining activities presented by the test claim legislation and includes whether some or all of these activities are a "new program or higher level of service" and impose "costs mandated by the state" on local law enforcement agencies.

² Article XIII B, section 6 of the California Constitution; *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Government Code section 17514.

PART 1 --REGISTRATION FOR NEW CRIMES AND TIMELINES

The only issue presented by Part 1, "Registration for New Crimes and Timelines," is whether this portion of the test claim legislation creates a new crime and thus does not impose a reimbursable state mandate under article XIII B, section 6 of the California Constitution and Government Code section 17556, subdivision (g).

Article XIII B, section 6 of the California Constitution provides that the Legislature may not provide subvention of funds for mandates that define a new crime or change the existing definition of a crime. Section 6 specifically states:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

- (a) Legislative mandates requested by the local agency affected
- (b) Legislation defining a new crime or changing an existing definition of a crime; or [Emphasis added.]
- (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

Article XIII B, section 6 was codified by Government Code section 17556, subdivision (g), and provides that there are no "costs mandated by the state" when:

The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a new crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction. [Emphasis added.]

Claimant contends that the registration requirements in the test claim legislation, section 290, subdivision (a), which includes the duty to register and the time periods in which to register are a reimbursable state mandated program. As described below, the majority of crimes identified in the test claim legislation are not new crimes and have imposed a duty to register on convicted sex offenders for over fifty years. However, the test claim legislation has added some additional crimes that require registration by certain convicted sex offenders. If these individuals fail to register as a sex offender within a specific time period, the test claim legislation states that they are now guilty of a misdemeanor, felony and/or a continuing offense.

• New Crimes That Require Registration

Under prior law, any person, since July 1, 1944, who has been convicted in any court in California, another state or a federal or military court who has been released, discharged or paroled or who has been determined to be a mentally disordered sex offender must register under section 290 if convicted under the following offenses:

kidnapping; assault to commit rape, sodomy or oral copulation; aiding or abetting rape; lewd or lascivious acts involving children; penetration by a

foreign object; sexual battery (includes seriously disabled or medically incapacitated victims); rape with a person who cannot give consent because of a mental or physical disability; rape against a person's will by means of force, violence, duress, menace or fear of immediate and unlawful bodily injury on the person or another; rape when a person cannot resist because of intoxication or anesthetic; rape when the person is unconscious; rape by threat of future harm; spousal rape; procurement; procurement of a child; abduction of a minor for prostitution; incest; sodomy; oral copulation; continuous sexual abuse of a child; production, distribution or exhibition of obscene matter; sexual exploitation of a child; employment of a minor in the sale or distribution of obscene matter or production of pornography; advertisement of obscene matters depicting minors; possession or control of child pornography; annoying or molesting children; loitering around public, open toilets for the purpose of soliciting any lewd or lascivious or unlawful act; indecent exposure; any felony violation for sending harmful matter to a minor or any crime that a court finds was committed as a result of sexual compulsion or for the purpose of sexual gratification.³

However, the test claim legislation⁴ now has expanded the list of crimes that require registration by convicted sex offenders and has essentially created a "new" crime, if individuals convicted of the below offenses fails to register within a specific time frame:

kidnapping for gain to commit robbery with intent to commit rape, sodomy, lewd or lascivious acts involving children, oral copulation or penetration by foreign object⁵ as well as pimping, pandering and aggravated sexual assault of a child.⁶

If the offender fails to register as a sex offender for these new crimes, then the offender is guilty of a misdemeanor, felony and/or a continuing offense. Specifically, section 290 of the test claim legislation, subdivision (g)(1), provides:

Any person who is required to register under this section based on a misdemeanor conviction who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

In addition, subdivision (g)(2) provides:

[A]ny person who is required to register under this section based on a felony conviction who willfully violates any requirement of this section or

³ Penal Code sections 207; 220; 264.1; 288; 272; 289; 243.4; 261, subdivision (a)(1); 261, subdivision (a)(2); 261, subdivision (a)(3); 261, subdivision (a)(4); 261, subdivision (a)(6); 262, subdivision (a)(1); 266; 266j; 267; 285; 286; 288a; 288.5; 311.2; 311.3; 311.4; 311.10; 311.11; 247, subdivision (a); 647, subdivision (d); 314; 288.2 and 290, subdivision (E).

⁴ Penal Code section 290, subdivision (a)(2)(A)-(E).

⁵ Penal Code sections 209, 261, 286, 288, 288a, and 289, Statutes of 1997, Chapter 817.

⁶ Penal Code sections 266, subdivisions (h)(b); 266, subdivisions (i)(b) and 269, Statutes of 1997, Chapter 818.

who has a prior conviction for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

Also, subdivision (g)(7) provides:

Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

Thus, under prior law, a sex offender convicted of kidnapping for gain to commit robbery with intent to commit rape, sodomy, lewd or lascivious acts involving children, oral copulation or penetration by foreign object as well as pimping, pandering and aggravated sexual assault of a child, did not have to register as a sex offender. Now, under the test claim legislation, if these convicted sex offenders fail to register, they will be guilty of a misdemeanor, felony and/or a continuing offense.

Nonetheless, claimant contends that the test claim legislation only "expands the requirement of registration for sex offenders" and does not create a new crime or change the existing definition of a crime. Claimant's contention is correct inasmuch as the list of crimes in which a sex offender must register for has been expanded. However, claimant's analysis of this issue is short sided. Claimant fails to recognize that by adding these crimes the test claim legislation has created a "new" crime. As stated above, if these convicted sex offenders fail to register as a sex offender, they will now be guilty of a misdemeanor, felony and/or a continuing offense; whereas before the test claim legislation, they would not have been guilty of a crime. Accordingly, the Commission finds that this portion of the test claim legislation creates a new crime.

- **New Time Periods in Which to Register**

Section 290 of the test claim legislation has also created new time periods in which certain convicted sex offenders must register including when an offender has multiple addresses, is a sexually violent predator or changes his or her name. Like the above new crimes, failure to register within the proscribed timelines is a misdemeanor, felony and/or a continuing offense.

Specifically, section 290 of the test claim legislation requires a convicted sex offender who has more than one residence to register in each jurisdiction where the offender resides. If the offender resides in one jurisdiction but has multiple addresses in that jurisdiction, then the offender must provide the local law enforcement agency in that jurisdiction with all addresses.⁷ If the offender has no residence, the offender must update his or her registration no less than every 90 days with the local law enforcement agency in which the offender is located at the time of registration.⁸

Additionally, if the convicted sex offender is a sexually violent predator, then the offender must verify his or her address and place of employment including the name and address of the employer, no less than once every 90 days in a manner established by the Department of Justice.⁹

⁷ Penal Code section 290, subdivision (a)(1)(B), Statutes of 1998, Chapter 929.

⁸ Penal Code section 290, subdivision (a)(1)(C), Statutes of 1997, Chapter 820.

⁹ Penal Code section 290, subdivision (a)(1)(E), Statutes of 1997, Chapter 818.

Lastly, if a convicted sex offender changes his or her name, the offender then must inform the local law enforcement agency where the offender is registered within 5 working days of the name change.¹⁰

As mentioned above, section 290 of the test claim legislation, subdivisions (g)(1)(2)(7), states that it is a misdemeanor, felony and/or a continuing offense if a convicted sex offender does not register as required under the test claim legislation. In addition, other provisions in section 290 state that it is a crime if a convicted sex offender does not register within a specified time period. Specifically, subdivision (g)(6) provides that:

Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (B) of paragraph (1) of subdivision (a) to update his or her registration every 90 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (B) of paragraph (1) of subdivision (a) shall update their registration every 90 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. [Emphasis added.]

Subdivision (g)(5); provides that:

Any person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, fails to verify his or her registration every 90 days as required pursuant to subparagraph (D) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

Accordingly, by adding additional timelines in which convicted sex offenders must register, section 290 of the test claim legislation defines a new crime. Under prior law, these convicted sex offenders had no duty to register in the proscribed time periods. Now, under section 290 of the test claim legislation, if they do not register or provide notification of a name change, the offender may be guilty of a misdemeanor, felony or continuing offense. Accordingly, the Commission finds that this portion of the test claim legislation creates a new crime.

Conclusion

Based on the foregoing, a convicted sex offender's "Duty to Register for New Crimes and Timelines" does not impose a reimbursable state mandate under article XIII B, section 6 of the California Constitution and Government Code section 17556, subdivision (g).

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¹⁰ Penal Code section 290, subdivision (f)(3), Statutes of 1996, Chapter 909.

PART 2 - REMAINING ISSUES PRESENTED BY THE TEST CLAIM LEGISLATION

Issue 1:

Is the test claim legislation a "program" within the meaning of article XIII B, section 6 of the California Constitution by carrying out either the governmental function of providing services to the public or imposing unique requirements on local law enforcement agencies?

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the test claim legislation must constitute a "program." In *County of Los Angeles v. State of California*, the California Supreme Court defined the word "program," within the meaning of article XIII B, section 6, as a program that carries out the governmental function of providing a service to the public, or laws, which to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.¹¹ In *Carmel Valley*, the court held that only one of these findings is necessary to trigger the applicability of article XIII B, section 6.¹²

To determine whether the test claim legislation carries out the governmental function of providing services to the public, it is necessary to define the program in which the test claim legislation operates.

California courts have continually held that police and fire protection are two of the most basic functions of local government and are peculiarly governmental in nature.¹³ In the present case, the test claim legislation concerns police protection, because it relates specifically to the registration of certain convicted sex offenders and public disclosure of their identity by local law enforcement agencies.

Accordingly, the Commission finds that test claim legislation is a "program" within the meaning of article XIII B, section 6 of the California Constitution, because it carries out the governmental function of providing police protection to the public.

Issue 2:

Is the test claim legislation a "new program or higher level of service" within the meaning of article XIII B, section 6 of the California Constitution?

To determine if a program is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.¹⁴

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¹¹ *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

¹² *Carmel Valley Fire Protection Dist., supra*, 190 Cal.App.3d at 537.

¹³ *Carmel Valley Fire Protection Dist., supra*, 190 Cal.App.3d 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.

¹⁴ *County of Los Angeles, supra* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist., supra* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

A breakdown of the required activities imposed on local law enforcement agencies is as follows:

- **Change in Existing Timelines to Register**

Prior law required every convicted sex offender of a specified crime to register in the jurisdiction where the offender resides within 14 days of coming into the applicable jurisdiction and to update the registration within 10 days of the offender's birthday.¹⁵ The test claim legislation shortened these deadlines to within 5 working days of when an offender enters the applicable jurisdiction, and to within 5 working days of the offender's birthday for annual updates.¹⁶

In addition, prior law required that the convicted sex offender register with the local law enforcement agency that the offender was last registered with in writing within 10 days of a change of address. Within three days after receipt of this information, the local law enforcement agency must forward a copy of the change of address or location to the Department of Justice. The Department of Justice shall forward the appropriate registration data to the local law enforcement agency or agencies having jurisdiction over the new place of residence or location.¹⁷ The test claim legislation is the same as prior law, except that the time period in which an offender has to report his or her change of address was changed from 10 days to 5 working days.

The mere shortening in time of registration deadlines does not change the level of service related to the above activities. Accordingly, there is no new program or higher level of service due to a change in the existing registration deadlines.

- **Violent Crime Information Network**

The test claim legislation states that "[t]he registering agency [local law enforcement agency] shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN)."¹⁸ There was no activity in prior law requiring local law enforcement agencies to submit registrations to VCIN. Therefore, this activity is a new program or higher level of service.

- **Removal of Registration for Decriminalized Conduct**

The test claim legislation exempts a person from registering as a sex offender under specified conditions if the offender was convicted of sodomy or oral copulation between consenting adults prior to January 1, 1976. The Department of Justice is required to remove these individuals from the Sex Offender Registry. Upon notification from the Department of Justice that an offender should be removed from the register, the local law enforcement agency must remove the offender's registration from its files within 30 days from receipt of notification.¹⁹ There was no activity in prior law providing for the decriminalization of this conduct. Therefore, the activity of removing an individual from a local law enforcement agency's file is a new program or higher level of service.

¹⁵ Penal Code section 290, subdivision (a), Statutes of 1984, Chapter 1419.

¹⁶ Penal Code section 290, subdivision (a)(1)(A), Statutes of 1996, Chapter 909.

¹⁷ Penal Code section 290, subdivision (e), Statutes of 1950, Chapter 70.

¹⁸ Penal Code section 290, subdivision (a)(1)(F), Statutes of 1998, Chapter 929.

¹⁹ Penal Code section 290, subdivision (a)(2)(F)(i), Statutes of 1997, Chapter 821.

- **Notice of Duty to Register Upon Release, Discharge or Parole**

Prior law provides that any person who, after the first day of August, 1950, is discharged or paroled from a jail, prison, school, road camp, or other institution where the person was confined or is released from a state hospital to which he was committed as a psychopath be informed of the duty to register by the official in charge of the place of confinement before the offender is released. The official in charge must advise the convicted sex offender of the duty to register and must also have the offender read and sign a form that states this duty was explained to the offender. The official in charge of the offender's release must also obtain the address of where the person expects to reside and will report the address to the Department of Justice and to the local law enforcement agency or agencies having jurisdiction over the place that the offender expects to reside. The official in charge must give one copy of the form to the offender, send one copy to the Department of Justice and one copy to the local law enforcement agency or agencies having jurisdiction over the offender.²⁰

The test claim legislation contains the same "Notice of Duty to Register" requirement as prior law, except that some non-substantive changes have been made including moving this section to 290, subdivision (b)(1) and (2). Nonetheless, since the test claim legislation contains the same notification requirement on local law enforcement agencies as prior law, there is no new program or higher level of service related to this activity.

- **Destruction of Records**

Prior law provided that all records specifically relating to the registration of sex offenders in the custody of the Department of Justice, local law enforcement agencies and other agencies or public officials be destroyed when the offender required to register has his or her records sealed under the procedures set forth in section 781 of the Welfare and Institutions Code.²¹

The test claim legislation contains the same "Destruction of Records" requirement as prior law, except that some non-substantive changes have been made including moving this section to 290, subdivision(d)(5). However, the requirement to destroy the records has remained the same. Thus, there is no new program or higher level of service related to this activity.

- **Pre-register**

The test claim legislation states that a convicted sex offender required to register under its provisions on or after January 1, 1998, shall also pre-register upon incarceration, placement or commitment or prior to release on probation. The pre-registering official shall be the admitting officer at the place of incarceration, placement or commitment or the probation officer if the person is to be released on probation. The pre-registration shall consist of a pre-registration statement in writing, signed by the person, giving information that shall be required by the Department of Justice, fingerprints and a photograph of the person.²² Prior law contained no provision for the activity of pre-registering. Thus, to the extent that a local law enforcement agency must pre-register convicted sex offenders, this activity is a new program or higher level of service.

²⁰ Penal Code section 290, subdivision (b), Statutes of 1950, Chapter 70.

²¹ Penal Code section 290, subdivision (d)(6).

²² Penal Code section 290, subdivision (e)(1)(A)(B)(C), Statutes of 1997, Chapter 821.

• Contents of Registration Upon Release

Prior law required that a convicted sex offender register upon release from incarceration, placement or commitment with the local law enforcement agency or agencies in which the offender resides. The registration must contain a statement in writing signed by the offender, giving information as may be required by the Department of Justice, fingerprints, a photograph of the offender and the license plate number of any vehicle owned by or registered in the name of the offender. Within three days of receiving this information, the registering law enforcement agency must forward this information to the Department of Justice.²³

In addition to the above requirements, the test claim legislation imposes some additional requirements on the convicted sex offender as well as local law enforcement agencies. With regard to the signed statement, in addition to the information required by the Department of Justice, the offender must also provide the name and address of his or her employer, and the address of the offender's place of employment if it is different from the employer's main address.²⁴ With regard to vehicle information, the convicted sex offender must also include information related to any vehicle regularly driven by the offender.²⁵ The offender must also be notified by the local law enforcement agency that in addition to the requirements of the test claim legislation, the offender may also have a duty to register in any other state where the offender may relocate.²⁶

Lastly, the test claim legislation requires that the offender provide the local law enforcement agency with adequate proof of residence, which is limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing the offender's name and address or any other information that the registering official believes is reliable. If the offender has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the offender shall advise the registering official and sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the offender has no residence, the offender shall be allowed to register. If the offender claims that he or she has a residence but does not have any proof of residence, the offender shall be allowed to register but shall furnish proof of residence within 30 days of the day the offender is allowed to register.²⁷

Although the above activities are directed at the convicted sex offenders, they also require various activities on local law enforcement agencies to the extent that local law enforcement agencies have to compile this information so that it can be sent to the Department of Justice. Thus, the compiling of this additional data is a new program or higher level of service.

²³ Penal Code section 290, Statutes of 1947, Chapter 1124. This provision, absent minor non-substantive changes, has remained the same since section 290 was originally enacted in 1947.

²⁴ Penal Code section 290, subdivision (e)(2)(A), Statutes of 1998, Chapter 930.

²⁵ Penal Code section 290, subdivision (e)(2)(C), Statutes of 1997, Chapter 927.

²⁶ Penal Code section 290, subdivision (e)(2)(D), Statutes of 1997, Chapter 927.

²⁷ Penal Code section 290, subdivision (e)(2)(E), Statutes of 1997, Chapter 927.

- **Notice of Reduction of Registration Period**

The test claim legislation requires that every convicted sex offender who was required to register before January 1, 1997, shall be notified whenever the offender next re-registers of the reduction in the registration period from 14 days to 5 working days. The notice must be in writing from the local law enforcement agency responsible for registering the individual.²⁸

Prior law required every convicted sex offender registering before January 1, 1985 to be notified of the reduction in the registration period from 30 to 14 days. Since the test claim legislation changes the registration period, a new notification is required.²⁹ Accordingly, the activity of notifying convicted sex offenders of the 14 to 5 day reduction in the timelines to register is a new program or higher level of service.

- **High-Risk Sex Offenders**

The test claim legislation provides that individuals considered to be high-risk offenders can be re-evaluated by the Department of Justice to be removed from the high-risk classification. This process does not involve law enforcement agencies except that the form for evaluation must be available at any sheriff's office. Thus, to the extent that a sheriff's office must maintain this form, there is a new program or higher level of service.³⁰

The test claim legislation also provides that the Department of Justice shall continually search its records and identify, on the basis of those records, high-risk offenders. Four times each year, the Department must provide each chief of police and sheriff in the state and any other designated law enforcement entity upon request information regarding the identity of high-risk sex offenders.

Department of Finance contends that although the Department of Justice must send this information to each chief of police and sheriff in the state, these law enforcement agencies can choose to disregard this information, because the test claim legislation does not impose any duty on them in this regard. This assertion is misplaced. As discussed below, in the "Community Notification" section, subdivision (n) of section 290 requires local law enforcement agencies, under certain circumstances, to disclose information about high-risk sex offenders to the public, which includes statistical information. Thus, to the extent that local law enforcement agencies need to compile this statistical data related to high-risk offenders, this activity is a new program or higher level of service.³¹

- **Community Notification**

The test claim legislation permits a local law enforcement agency to disclose information about a convicted sex offender³² or high-risk sex offender³³ under certain circumstances if a peace

²⁸ Penal Code section 290, subdivision (l), Statutes of 1997, Chapter 821.

²⁹ Penal Code section 290, subdivision (l), Statutes of 1985, Chapter 1474.

³⁰ Penal Code section 290, subdivision (n)(1)(G)(ii), Statutes of 1996, Chapter 908.

³¹ Penal Code section 290, subdivision (n)(2), Statutes of 1996, Chapter 908.

³² Penal Code section 290, subdivision (m), Statutes of 1996, Chapter 908.

³³ Penal Code section 290, subdivision (n), Statutes of 1996, Chapter 908.

officer reasonably suspects that a child or other person is at risk. Specifically, the test claim legislation provides:

When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

- (A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.
- (B) Other community members at risk. [Emphasis added.]

This information generally includes information that the agency deems relevant and necessary to protect the public and may include the following:

1. The offender's full name.
2. The offender's known aliases.
3. The offender's gender.
4. The offender's race.
5. The offender's physical description.
6. The offender's photograph.
7. The offender's date of birth.
8. Crimes resulting in registration.
9. The offender's address, which must be verified prior to publication.
10. Description and license plate number of offender's vehicles or vehicles the offender is known to drive.
11. Type of victim targeted by the offender.
12. Relevant parole or probation conditions, such as one prohibiting contact with children.
13. Dates of crimes resulting in classification under the test claim legislation.
14. The date of release from confinement.³⁴

³⁴ Penal Code section 290, subdivision (m)(4), Statutes of 1996, Chapter 908.

Although it is a well-settled principle of statutory construction that the word "may" is ordinarily construed as permissive and "shall" is ordinarily construed as mandatory, there are situations in which "may" is interpreted to mean "shall."³⁵ In *Los Angeles County v. State*,³⁶

the Third District Court of Appeal held:

The word "may" as used in a statute or constitution is often interpreted to mean "shall" or "must." Such interpretation always depends largely, if not altogether, on the object sought to be accomplished by the law in which the word is used. It seems to be the uniform rule that, where the purpose of the law is to clothe public officers with power to be exercised for the benefit of third persons, or for the public at large – that is, where the public interest or private rights requires that the thing be done then the language, though permissive in form, is peremptory . . .

Since a peace officer is a "public officer,"³⁷ if a peace officer reasonably suspects that a child or another person is at risk from a sex offender or high-risk sex offender, the peace officer must notify certain members of the public that may be in danger from the sex offender. There was no activity in prior law related to community notification of sex offenders. Thus, the community notification activity is a new program or higher level of service.

• CD ROM

The test claim legislation states that on or before July 1, 1997, the Department of Justice shall provide a CD-ROM or other electronic medium containing information about certain sex offenders and shall update and distribute the CD-ROM or other electronic medium on a monthly basis to sheriff's departments in each county, municipal police departments of cities with a population of more than 200,000 and other law enforcement agencies. The local law enforcement agencies "may" obtain additional copies by purchasing a yearly subscription to the CD-ROM or other electronic medium from the Department of Justice for a yearly subscription fee and "may" make the CD-ROM or other electronic medium available for viewing by the public.³⁸

Like the Community Notification activity above, the use of the term "may," though permissive in form, is peremptory. In fact, according to the legislative history, it was the legislative intent that the CD-ROM or other electronic medium shall be made available to the public.³⁹ Assembly Bill 1562 states that:

Knowing the identity of sex registrants empowers parents to protect their children from exposure to persons who might do them harm. Likewise, adult victims would similarly be empowered. It deters sex

³⁵ *Common Cause of California v. Board of Supervisors of L.A. County* (1989) 49 Cal.3d 432..

³⁶ *Los Angeles County v. State* (1923) 64 Cal.App.290.

³⁷ Government Code section 195 and Evidence Code section 200.

³⁸ Penal Code section 290.4, subdivision (a)(4)(A), Statutes of 1996, Chapter 908.

³⁹ Assem. Bill No. 1562 (1995-1996 Reg. Sess.) Proposed Conference Report No. 1, August 27, 1996, page 2, paragraph 12.

offenders from re-offending by increasing public awareness of their proclivities, thereby discouraging them from contact with children.⁴⁰

Moreover, the California Department of Justice evaluated patterns of sex offenders and conducted a 15-year follow-up of sex offenders first arrested in 1973. The Department of Justice found:

An analysis of subsequent arrests over the 15-year period (1973-1988) found that nearly one-half (49.4%) were re-arrested for some type of offense and almost 20% (19.7%) for a subsequent sex offense. Sex offenders whose first arrest was for rape by force or threat had the highest recidivism rate, 63.4% for any offense and 25.5% for a subsequent offense. The high recidivist rate could be attributed, in part, to the anonymity of the sex offender.⁴¹

Accordingly, the test claim legislation requires that the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000 and other applicable law enforcement agencies provide the necessary equipment for the public to access the sex offender information provided by the Department of Justice on CD-ROM or another electronic medium. Prior law had no provision related to this activity. Thus, this activity is a new program or higher level of service.

• Records Retention

The test claim legislation requires local law enforcement agencies to maintain records of those persons requesting to view the CD-ROM or other electronic medium for a minimum of five years and to maintain records of the means and dates of dissemination for a minimum of five years related to the disclosure of high-risk offenders.⁴² There is no records retention activity under prior law related to CD-ROM or other electronic medium. Accordingly, the records retention activity is a new program or higher level of service.

Conclusion

Based on the foregoing, the following activities are a new program or higher level of service under article XIII B, section 6 of the California Constitution:

- Submission of Registered Sex Offender information to the Department of Justice's Violent Crime Information Network by Local Law Enforcement Agencies (a)(1)(F))
- Removal of Registration for Decriminalized Conduct (§290, subdivision (a)(2)(F)(i))
- Pre-register (§290, subdivision (e)(1)(A-C))
- Contents of Registration Upon Release (§290, subdivision (e)(2)(A-E))
- Notice of Reduction of Registration Period (§290, subdivision (l)(1))

⁴⁰ *Supra*, page 4, paragraph 3.

⁴¹ *Supra*, page 4, paragraph 4.

⁴² Penal Code section 290, subdivision (o), Statutes of 1996, Chapter 908.

- High-Risk Sex Offenders (§290, subdivision (n))
- Community Notification (§290, subdivision (m))
- CD ROM (§290.4, subdivision (4)(A-C))
- Records Retention (§290, subdivision (o))

However, the analysis must continue to determine if the above activities impose “costs mandated by the state,” under Government Code section 17514.

Issue 3:

Does the test claim legislation impose “costs mandated by the state” within the meaning of Government Code section 17514?

Under Government Code section 17514 a new program or higher level of service must impose “costs mandated by the state.” However, under Government Code section 17556, subdivision (c), the Commission shall not find “costs mandated by state” if the test claim legislation implemented a federal law.

Government Code section 17556, subdivision (c), provides that there are no “costs mandated by the state” when:

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation. [Emphasis added.]

Government Code section 17513 defines “costs mandated by the federal government” as:

... any increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or regulation. “Costs mandated by the federal government” includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. “Costs mandated by the federal government” does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the option of the state, local agency, or school district. [Emphasis added.]

- Federal Law

History of the Federal Law

There are three federal enactments that concern the test claim legislation: the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Megan’s Law and the Pam Lychner Sexual Offender Tracking and Identification Act. The collective result of these

enactments is codified in 42 U.S.C. 14071-72 (referred to below as “section 14071”)⁴³ and represents the federal law in this matter. These three enactments are as follows:

1. The Wetterling Act, which was enacted by section 170101 of the Violent Crime Control and Law Enforcement Act of 1994,⁴⁴ encourages states to establish an effective sex offender registration system.
2. Megan’s Law,⁴⁵ which amended the provisions of the Wetterling Act, relates to the release of registration information.
3. The Lychner Act,⁴⁶ which makes further amendments to the Wetterling Act, contains provisions to ensure the nationwide availability of sex offender registration information to law enforcement agencies.

The federal Department of Justice issued guidelines for state compliance with the original version of the Wetterling Act⁴⁷ and has more recently published guidelines to implement Megan’s Law and clarify other issues concerning Wetterling Act compliance, or section 14071.⁴⁸

Overview of Section 14071

Section 14071 provides a financial incentive for states to establish 10 year registration requirements for persons convicted of certain crimes against minors and sexually violent offenses and to establish a more stringent set of registration requirements for a sub-class of highly dangerous sex offenders characterized as “sexually violent predators.” States that fail to establish such systems within three years (subject to a possible two year extension) face a 10% reduction in funding for HIV testing.⁴⁹

In order to determine if the federal exception applies to the test claim legislation, the Commission must first determine if the test claim legislation implemented section 14071 and resulted in “costs mandated by the federal government.” If so, the Commission must then determine if the test claim legislation exceeds the scope of section 14071.

• Findings

Did the Test Claim Legislation Implement Section 14071?

The legislative history of the test claim legislation shows that it was enacted to implement section 14071. Assembly Bill 1562 specifically states that the passage of the test claim legislation “will launch Megan’s Law in California and fulfill the requirements of the federal law.” “Failure to act would constitute non-compliance with the Jacob Wetterling Crimes Against

⁴³ 42 U.S.C.A. section 14072 is not relevant to the test claim as it specifically deals with the FBI database.

⁴⁴ 42 U.S.C.A. section 14071, Public Law 102-322, 108 Stat. 1796, 2038.

⁴⁵ 42 U.S.C.A. section 14071, Public Law 104-145, 110 Stat. 1345, May 17, 1996.

⁴⁶ 42 U.S.C.A. section 14071, Public Law 104-236, 110 Stat. 3096, 3097, October 3, 1996.

⁴⁷ 61 FR 15110 (issued April 4, 1996), Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexual Violent Offender Registration.

⁴⁸ 64 FR 572 (issued January 5, 1999) and 64 FR 3590 (issued January 22, 1999), Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexual Violent Offender Registration.

⁴⁹ 42 U.S.C.A. section 3756, subdivision (f).

Children and Sexually Violent Offender Registration Act and result in the loss of nearly \$5 million in ...funding.”⁵⁰

In addition, section 14071 specifically provides that states must comply/implement its provisions or lose funding for HIV testing. Section 14071 states that the Attorney General shall establish guidelines for state programs for certain individuals convicted of specified sexual offenses.⁵¹ As mentioned above, the Attorney General issued these guidelines in 1996 and revised and reissued them again in 1999. Section 14071 specifically outlines the provisions that a state registration program must contain⁵² and specifies the dates in which states must comply with section 14071 as well as the consequences if a state fails to comply with its provisions.⁵³

Accordingly, the Commission finds that the test claim legislation implemented section 14071. However, the analysis must continue to determine if the test claim legislation results in “costs mandated by the federal government.”

Does the Test Claim Legislation Result in Costs Mandated by the Federal Government?

“Costs mandated by the federal government” includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet a specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. However, “costs mandated by the federal government” does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the option of the state, local agency or school district.⁵⁴ [Emphasis added.]

In order to determine if the test claim legislation was “implemented at the option of the state,” California courts, including the California Supreme Court, have held that “[t]he test for determining whether there is a federal mandate is whether compliance with federal standards ‘is a matter of true choice,’ that is, whether participation in the federal program ‘is truly voluntary.’”⁵⁵ The *Hayes* court in following the California Supreme Court’s decisions in *City of Sacramento v. State of California (Sacramento II)*,⁵⁶ held that a “determination of whether compliance with a federal law is mandatory or optional must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to

⁵⁰ Assem. Bill No. 1562 (1995-1996 Reg. Sess.) Proposed Conference Report No. 1, August 27, 1996, pages 5 and 6.

⁵¹ 42 U.S.C.A., section 1407(a), Public Law 103-322, 108 Stat. 2038.

⁵² 42 U.S.C.A., section 1407(b), Public Law 103-322, 108 Stat. 2038.

⁵³ 42 U.S.C.A., section 1407(f)(1)(2), Public Law 103-322, 108 Stat. 2038.

⁵⁴ Government Code section 17513.

⁵⁵ *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1581; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76.

⁵⁶ *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.

participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance or withdrawal.”⁵⁷ Application of these factors in the present case is as follows:

- **Nature and Purpose of the Federal Program** - The federal legislation was enacted to provide the public with information regarding certain convicted sex offenders. The centerpiece of the test claim legislation, the registration and notification provisions related to convicted sex offenders, has its genesis in a New Jersey murder case. On July 29, 1994, Megan Kanka was raped and asphyxiated to death by Jesse Timmendequas, Megan's thirty-three year old neighbor. Unbeknownst to Megan's parents, Timmendequas was a convicted child molester living in a nearby home with two other convicted pedophiles. The brutal murder of this young girl shocked the nation, and catapulted the issue of sexually violent crimes against children onto a national stage.
- **Whether the Federal Statute Suggests an Intent to Coerce** - Although no monetary penalties would be assessed against the state for failure to implement section 14071, it would lose substantial funds for HIV testing of certain sex offenders. According to the test claim legislation, “[a] state that fails to implement the program as described in this section [the test claim legislation] shall not receive 10 percent of the funds that would otherwise be allocated to the State under section 3756 of this title.”⁵⁸ Section 3756 provides:

(a) States

Subject to subsection (f) of this section, of the total amount appropriated for this subchapter in any fiscal year, the amount remaining after setting aside the amount required to be reserved to carry out section 3761 of this title shall be set aside for section 3752 of this title and allocated to States as follows:

(1) \$500,000 or 0.25 percent, whichever is greater, shall be allocated to each of the participating States; and

(2) of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State bears to the population of all the States.⁵⁹

Subsection (f) provides for the testing of certain sex offenders for human immunodeficiency virus.⁶⁰

In addition, as discussed above, the legislative history of the test claim legislation shows that if California refused to implement section 14071, it would lose

⁵⁷ *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1582; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76.

⁵⁸ 42 U.S.C.A. section 1407(a), 108 Stat. 2038.

⁵⁹ 42 U.S.C.A. section 3756(a), 108 Stat. 2138.

⁶⁰ 42 U.S.C.A. section 3756(f), 108 Stat. 2138.

substantial funds for HIV testing. Specifically, Assembly Bill 1562 states that "[f]ailure to act would constitute non-compliance with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act and result in the loss of nearly \$5 million in ... funding."⁶¹ Clearly, the Legislature believed that such a loss in funding was "substantial," since it was the basis of compliance with section 14071.

Thus, although no monetary penalties would be assessed against the state for failure to implement section 14071, it would lose substantial funds for HIV testing of certain sex offenders.

- **When State and/or Local Participation Began** – Section 170101 of the Violent Crime Control and Law Enforcement Act was enacted on September 13, 1994. Congress amended and President Clinton signed the Wetterling Act portion of section 14071 in May of 1996. The test claim legislation was enacted by an "urgency statute" and became effective on September 25, 1996.
- **The Penalties, if any Assessed for Withdrawal or Refusal to Participate or Comply** – There are no penalties if a state fails to comply with the federal legislation. However, as mentioned above, failure to comply will result in a loss of federal funding for HIV testing for certain sex offenders.
- **Any Other Practical or Legal Consequence of Nonparticipation, noncompliance or withdrawal** - Practically speaking, California, like all the other states, had no choice but to comply with the federal legislation or lose substantial funding.

Based on the above factors, the Commission finds that the state had no "true choice" but to comply with the provisions of section 14071. Accordingly, the test claim legislation implemented a federal law and resulted in costs mandated by the federal government.⁶²

However, the federal exception does not apply to the extent that the test claim legislation mandates costs that exceed the mandate in that federal law or regulation.⁶³ Thus, the Commission must compare the test claim legislation to the federal legislation to determine which costs or activities exceed the federal mandate.

Does the Test Claim Legislation Exceed the Federal Mandate?

In order to determine if the test claim legislation exceeds section 14071, the Commission has compared the activities imposed by the test claim legislation to section 14071 below. However, before comparing the test claim legislation and section 14071, it should be noted that section 14071 was not intended to, and does not have the effect of, making states less free than they were under prior law to impose such requirements. Hence, section 14071's standards constitute a floor for state programs, not a ceiling. States do not have to go beyond sections 14071's

⁶¹ Assem. Bill No. 1562 (1995-1996 Reg. Sess.) Proposed Conference Report No. 1, August 27, 1996, pages 5 and 6.

⁶² Government Code section 17556, subdivision (c).

⁶³ *Ibid.*

minimum requirements to maintain eligibility for funding, but they may retain the discretion to do so. State programs often contain elements that are not required under section 14071.⁶⁴

Activities Imposed by the Test Claim Legislation	Federal Mandate Section 14071.
Violent Crime Information Network ⁶⁵	Section 14071 has no requirement that the state establish a Violent Crime Information System. Thus, this activity exceeds the federal mandate. ⁶⁶
Removal of Registration for Decriminalized Conduct ⁶⁷	Section 14071 has no provision related to the activity of removing a registration for decriminalized conduct. Thus, this activity exceeds the federal mandate.
Pre-register ⁶⁸	Section 14071 has no provision related to the activity of pre-registering convicted sex offenders. Thus, this activity exceeds the federal mandate.
Contents of Registration Upon Release ⁶⁹	The only activity in section 14071 related to the registration activities in the test claim legislation is the requirement that local law enforcement agencies advise a convicted sex offender of a possible duty to register in any other state where the offender resides. ⁷⁰ Thus, with the exception of this activity, section 14071 does not have a specific mandate related to the registration activities imposed by the test claim legislation.
Notice of Reduction of Registration Period ⁷¹	Section 14071 has no provision related to the notice activity. Thus, this activity exceeds the federal mandate

⁶⁴ 64 FR 572.

⁶⁵ Penal Code section 290, subdivision (a)(1)(F), Statutes of 1998, Chapter 929.

⁶⁶ 42 U.S.C.A. section 14071, subdivision (b)(2)(3)(4), 108 Stat. 2038.

⁶⁷ Penal Code section 290, subdivision (F)(i)(I)(II)(III), Statutes of 1997, Chapter 821.

⁶⁸ Penal Code section 290, subdivision (e)(1)(A)(B)(C), Statutes of 1997, Chapter 821.

⁶⁹ Penal Code section 290, subdivision (e)(2)(A)(B)(C)(D)(E), Statutes of 1997, Chapter 927.

⁷⁰ 42 U.S.C.A. section 14071, subdivision (b)(iii), Public Law 103-322, 108 Stat. 2038.

⁷¹ Penal Code section 290, subdivision (I), Statutes of 1997, Chapter 821.

High-Risk Sex Offenders ⁷²	Section 14071 has no provision related to the activities associated with high-risk sex offenders. Thus, this activity exceeds the federal mandate.
Community Notification ⁷³	Section 14071 provides that any local law enforcement agency "may" release relevant information about a convicted sex offender that is necessary to protect the public concerning a specific person required to register. ⁷⁴ In the context of this section, the use of the term "may," though permissive in form, is peremptory. Thus, the community notification activity is a federal mandate and not a "cost mandated by the state."
CD ROM ⁷⁵	Although section 14071 has no provision related to the CD-ROM activity, Department of Finance contends that this activity merely implements federal law, because 42 U.S.C.A. 14071, subdivision (e)(2), states that "the State or any agency authorized by the State shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section." This contention is incorrect. Section 14071 does not require the relevant information to be released by CD ROM. Thus, this activity exceeds the federal mandate.
Records Retention ⁷⁶	Section 14071 has no provision related to the record retention activity. Thus, this activity exceeds the federal mandate.

In summary, the following activities imposed by the test claim legislation exceed section 14071, the federal mandate, and thus result in "costs mandated by the state:"

⁷² Penal Code section 290, subdivision (n)(1)(G)(ii)(2), Statutes of 1996, Chapter 908.

⁷³ Penal Code section 290, subdivision (m)(n), Statutes of 1996, Chapter 908.

⁷⁴ 42 U.S.C.A. section 14071, subdivision (b)(iii), Public Law 103-322, 108 Stat. 2038.

⁷⁵ Penal Code section 290.4, subdivision (a)(4)(A), Statutes of 1996, Chapter 908.

⁷⁶ Penal Code section 290, subdivision (o), Statutes of 1996, Chapter 908.

- **Violent Crime Information Network**

This activity requires a local law enforcement agency to submit sex offender registrations from its jurisdictions directly into the Department of Justice Violent Crime Information Network

- **Removal of Registration for Decriminalized Conduct**

This activity requires a local law enforcement agency to remove an offender's registration from its files within 30 days of receiving a notification to do so from the Department of Justice.

- **Pre-register**

This activity requires the admitting officer of a local law enforcement agency to pre-register a convicted sex offender but only if the local law enforcement agency is the place of incarceration. This pre-registration consists of a pre-registration statement in writing, signed by the person, giving information that is required by the Department of Justice, fingerprints and a current photograph of the offender.

- **Contents of Registration Upon Release**

A convicted sex offender has always had the duty to register upon release with the local law enforcement agency in which the offender will reside. While most of the activities related to this registration falls on the convicted sex offender, the following related activities are imposed on the registering local law enforcement agency:

1. The local law enforcement agency must ensure that the signed statement that a convicted sex offender must fill out upon registration contains the name and address of the offender's employer, and the address of the offender's place of employment if that is different from the employer's main address.
2. The local law enforcement agency must ensure that the convicted sex offender includes information related to any vehicle regularly driven by the offender on the registration.
3. The local law enforcement agency must ensure that the convicted sex offender upon registering has adequate proof of residence, which is limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the offender has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the local law enforcement agency shall provide the offender with a statement stating that fact.

- **Notice of Reduction of Registration Period**

This activity requires that convicted sex offenders who were required to register before January 1, 1997, shall be notified when the offender next registers of the reduction in the registration period was from 14 days to 5 working days. The one-time notice must be in writing from the local law enforcement agency responsible for registering the individual.

- **High-Risk Sex Offenders**

The test claim legislation imposes some new activities on specific local law enforcement agencies related to high-risk offenders. These activities are as follows:

1. Sheriffs' offices must make available to high-risk offenders a pre-printed form from the Department of Justice regarding re-evaluation by the Department of Justice to be removed from the high-risk classification.
2. A local law enforcement agency must maintain statistical information on high-risk offenders and photographs that it receives four times a year from the Department of Justice.

- **CD ROM**

This activity requires that the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000 and other applicable law enforcement agencies provide the necessary equipment for the public to access the sex offender information provided by the Department of Justice on CD-ROM or another electronic medium.

- **Records Retention**

This activity requires a local law enforcement agency to maintain records of those persons requesting to view the CD-ROM or other electronic medium for a minimum of five years and to maintain records of the means and dates of dissemination for a minimum of five years related to the disclosure of high-risk offenders.

Finally, the test claim legislation contains a sunset provision wherein it is only operative until January 1, 2004.

CONCLUSION

The Commission finds that Part 2 of the test claim legislation is a "program" within the meaning of article XIII B, section 6 of the California Constitution, because it carries out the governmental function of providing police protection to the public.

The Commission further finds that the following required activities, as outlined in more detail above, are a "new program or higher level of service" under article XIII B, section 6 of the California Constitution and result in "costs mandated by the state" within the meaning of Government Code section 17514:

- Submission of Registered Sex Offender information to the Department of Justice's Violent Crime Information Network by Local Law Enforcement Agencies (§290, subdivision (a)(1)(F))
- Removal of Registration for Decriminalized Conduct (§290, subdivision (a)(2)(F)(i))
- Pre-register (§290, subdivision (e)(1)(A-C))
- Contents of Registration Upon Release (§290, subdivision (e)(2)(A-E))
- Notice of Reduction of Registration Period (§290, subdivision (l)(1))
- High-Risk Sex Offenders (§290, subdivision (n))
- CD ROM (§290.4, subdivision (4)(A-C))
- Records Retention (§290, subdivision (o))

Lastly, the Commission finds that all other activities in the test claim legislation do not constitute a reimbursable state mandated program pursuant to article XIII B, section 6 of the California Constitution.

Accordingly, the Commission approves the test claim, in part, as outlined above.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 350, Sacramento, California 95814.

August 24, 2001, I served the:

RE: **Adopted Statement of Decision**
 Sex Offenders: Disclosure by Law Enforcement Officers, 97-TC-15
 County of Tuolumne, Claimant
 Penal Code Sections 290 and 290.4
 Statutes of 1996, Chapters 908 and 909
 Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821 and 822
 Statutes of 1998, Chapters 485, 550, 927, 928, 929 and 930

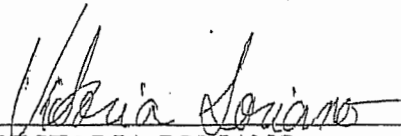
by placing a true copy thereof in an envelope addressed to:

Ms. Pamela Stone
DMG-MAXIMUS, Inc
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 24, 2001, at Sacramento, California.


VICTORIA SORIANO

Commission on State Mandates

List Date: 01/08/1998

Mailing Information Final Staff Analysis

Mailing List

Claim Number 97-TC-15 Claimant Claim of County of Tuolumne-Sheriff's
Department

Subject Penal Code sections 290 and 290.4

Issue 908/96

Sex Offenders: Disclosure by Law Enforcement Officers

Mr. Ted Buckley, Legal Advisor
Long Beach Unified School District

1515 Hughes Way Room 235
Long Beach CA 90810-1839

Tel: (562) 997-8251
FAX: (562) 997-8092

Interested Person

Mr. Allan Burdick,
MAXIMUS

4320 Auburn Blvd., Suite 2000
Sacramento CA 95841

Tel: (916) 485-8102
FAX: (916) 485-0111

Interested Person

Ms. Annette Chinn,
Cost Recovery Systems

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Folsom CA 95630

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FAX: (916) 939-7801

Interested Person

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County of Tuolumne
Sheriff's Department
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Interested Person

Mr. Glenn Haas, Bureau Chief (B-8)
State Controller's Office

Division of Accounting & Reporting
3301 C Street Suite 500
Sacramento CA 95816

Tel: (916) 445-8757
FAX: (916) 323-4807

State Agency

Penal Code sections 290 and 290.4

ject

908/96

Issue

Sex Offenders: Disclosure by Law Enforcement Officers

Mr. Leonard Kaye, Esq.,
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles CA 90012

Tel: (213) 974-8564
FAX: (213) 617-8106

Mr. Steve Keil,
California State Association of Counties

1100 K Street Suite 101
Sacramento CA 95814-3941

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FAX: (916) 441-5507

Interested Person

Mr. John P. Logger, SB-90 Coordinator
Auditor-Controller-Recorder
County of San Bernardino
222 West Hospitality Lane
San Bernardino CA 92415-0018

Tel: (909) 386-8850
FAX: (909) 386-8830

Mr. James Lombard, Principal Analyst (A-15)
Department of Finance

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State Agency

Ms. Laurie McVay,
DMG-MAXIMUS

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Spector, Middleton, Young & Minney, LLP

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Sacramento Ca 95825

Tel: (916) 646-1400
FAX: (916) 646-1300

Claim Number

97-TC-15

Claimant

Claim of County of Tuolumne-Sheriff's
Department

Subject

Penal Code sections 290 and 290.4

908/96

Issue

Sex Offenders: Disclosure by Law Enforcement Officers

Mr. Andy Nichols, Senior Manager
Centration, Inc.

8316 Red Oak, Suite 101
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FAX: (916) 351-1020

Interested Person

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State Agency

Ms. Eleanor Watanabe,
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Tel: (916) 000-0000

FAX: (916) 000-0000

Mr. David Wellhouse,
Wellhouse & Associates

9175 Kiefer Blvd Suite 121
Sacramento CA 95826

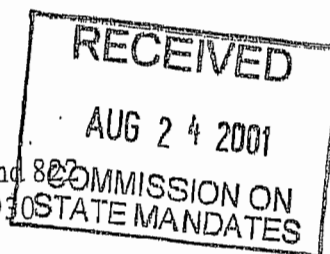
Tel: (916) 368-9244

FAX: (916) 368-5723

Interested Person

DRAFT PARAMETERS AND GUIDELINES

Penal Code Sections 290 and 290.4
 Statutes of 1996, Chapters 908 and 909
 Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821 and 822
 Statutes of 1998, Chapters 485, 550, 927, 928, 929 and 930



*Sex Offenders: Disclosure by Law Enforcement Officers
 "Megan's Law"*

I. SUMMARY AND SOURCE OF THE MANDATE

Penal Code sections 290 and 290.4 require law enforcement officers to disclose information regarding sex offenders in an effort to protect the public. Under specified circumstances, the information provided may include the identities and location of these sex offenders, and require notification to potential victims. The statutes require local law enforcement agencies to provide this information via electronic medium.

On July 26, 2001, the Commission adopted its Statement of Decision that the test claim legislation constitutes a reimbursable state mandated program upon local governments within the meaning of Article XIIB, Section 6, of the California Constitution and Government Code, Section 17514.

II. ELIGIBLE CLAIMANTS

Counties, cities, and cities and counties are eligible claimants.

III. PERIOD OF REIMBURSEMENT

Section 17557 of the Government Code, prior to its amendment by Statutes of 1998, Chapter 681, (effective September 22, 1998), stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this mandate was filed on December 30, 1997. Therefore, costs incurred are eligible for reimbursement on or after July 1, 1996.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code, section 17564.

IV. REIMBURSABLE ACTIVITIES

All direct and indirect costs of labor, materials, supplies, services, training and travel for the performance of the following activities are eligible for reimbursement:

A. Administrative Costs

1. Developing, updating and implementing internal policies, procedure and manuals as necessary to implement *Sex Offenders: Disclosure by Law Enforcement Officers, "Megan's Law"*.
2. Other activities to establish a single or multi-agency system for law enforcement agencies to perform the mandated activities.

B. One Time Costs

1. Provide notification to every registered sex offender convicted prior to January 1, 1997 within the claimant's jurisdiction of the reduction in the time to register or reregister from 14 days to 5 days.

C. On Going Costs

1. Developing, collecting and transmitting sex offender registrations from the local jurisdiction directly into the Department of Justice Violent Crime Information Network.
2. Removal of a sex offender's registration from the local jurisdiction's files within 30 days of receiving notice to do so from the Department of Justice.
3. If the local law enforcement agency is the current place of incarceration, the pre-registration of a convicted sex offender, including the obtaining of a current photograph and fingerprints of the offender as well as a written statement relaying information as is required by the Department of Justice. Notification to sex offender of duty to register and obtaining the signature of the sex offender as acknowledgment of the information contained within the pre-registration statement.
4. Verification that the sex offender's signed statement contains the name and address of the offender's employer, and the address of the offender's place of employment if it is different from the employer's main address.
5. Verification that the offender's registration includes information related to any vehicle regularly driven by the offender, including license number, make, model, and such other information as may be requested by the Department of Justice.

6. Verification that the convicted sex offender has adequate proof of residence, as determined by the Department of Justice; proof of residence is currently limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents, or any other information that the registering official believes is reliable. If the offender does not have a residence, and no reasonable expectation of obtaining a residence in the foreseeable future; then the local law enforcement agency shall obtain a statement to that effect from the sex offender.
7. Provide to high risk sex offenders a printed form from the Department of Justice regarding reevaluation in order to be removed from the high risk classification.
8. Maintain such photographs and statistical information concerning high risk sex offender as is received quarterly from the Department of Justice.
9. Provide the necessary equipment, staff assistance and security for the public to access the sex offender information provided by the Department of Justice on CD-ROM or other electronic medium, and obtaining information regarding individuals requesting access to the CD-ROM as required by the Department of Justice or state law.
10. Maintain records of those persons requesting access to the information contained within the CD-ROM or other electronic medium for a minimum of five years, and costs of destruction of such records at the end of such time. Additionally, a record of the means and dates of dissemination of information regarding high-risk offenders must be maintained for a minimum of five years, and costs of destruction at the end of such time.

V. CLAIM PREPARATION AND SUBMISSION

Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV of this document.

SUPPORTING DOCUMENTATION

Claimed costs shall be supported by the following cost element information:

A. Direct Costs

Direct costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.

1. Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity, the productive hourly rate, and related employee benefits.

Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and workers' compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

2. Materials and Supplies

Expenditure claims are limited to those that can be identified as direct costs of this mandate. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

Contracted services for participation of employer representatives in contract negotiation planning sessions will be reimbursed. Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.

4. Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points and travel costs.

5. Training

The cost of training an employee to perform the mandated activities is eligible for reimbursement. Identify the employee(s) by name or job classification. Provide

the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging and per diem. This data, if too voluminous to be included with the claim, shall be maintained by the local agency.

B. Indirect Costs

Indirect costs are defined as costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the two following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs

(net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

VI. SUPPORTING DATA

For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code, section 17558.5, subdivision (a).

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimant experiences as a direct result of the subject mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

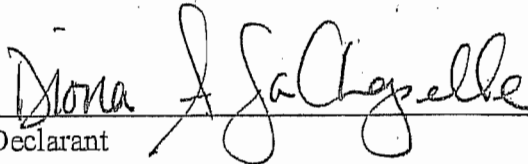
PROOF OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento, and I am over the age of 18 years and not a party to the within action. My place of employment is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On August 24, 2001 I served Draft Parameters and Guidelines, Sex Offenders: Disclosure by Law Enforcement Officers, 97-TC-15, by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list attached hereto, and by sealing and depositing said envelope in the United State mail at Sacramento, California, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed this 24th day of August, 2001 at Sacramento, California.


Declarant

Ms. Annette Chinn
Cost Recovery Systems
705-2 East Bidwell Street, #294
Folsom, CA 95630

Mr. John Logger, Reimbursable Projects Manager
Auditor-Controller's Office
222 W. Hospitality Lane, 4th Floor
San Bernardino, CA 92415-0018

Mr. James Lombard, Principal Analyst (A-15)
Department of Finance
915 L Street
Sacramento, CA 95814

Ms. Jean Green, Employee Relations Technician
County of Tuolumne – Sheriff's Department
28 N. Lower Sunset Drive
Sonora, CA 95370

Mr. Leonard Kaye
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Mr. Steve Keil
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941

Mr. Paul Minney
Spector, Middleton, Young & Minney, LLP
7 Park Center Drive
Sacramento, CA 95825

Mr. Joseph D. Mullender, Jr.
89 Rivo Alto Canal
Long Beach, CA 90803

Mr. Andy Nichols
Centration, Inc.
12150 Tributary Point Drive, Suite 150
Gold River, CA 95670

Ms. Connie Peters (D-27)
Youth & Adult Correctional Agency
1100 11th Street, 4th Floor
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Mr. Mark Sigman, Accountant II
Riverside County Sheriff's Office
4095 Lemon Street
P. O. Box 512
Riverside, CA 92502

Mr. Jim Spano
State Controller's Office
Division of Audits (B-8)
P. O. Box 942850
Sacramento, CA 95814

Mr. Glenn Haas, Bureau Chief (B-8)
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Mr. Jim Spano
State Controller's Office
Division of Audits (B-8)
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Sacramento, CA 95814

Mr. Glenn Haas, Bureau Chief (B-8)
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Legislative Analyst's Office
Attention: Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

Executive Director
California State Sheriffs' Association
P. O. Box 890790
West Sacramento, CA 95898

Executive Director
California Peace Officers' Association
1455 Response Road
Sacramento, CA 95815

Mr. Gary Maggie
Department of Justice
4949 Broadway
Sacramento, CA 95820

Mr. Keith B. Petersen, President
Sixten & Associates
5252 Balboa Ave., Suite 807
San Diego, CA 92117

Manuel Medeiros
Assist. Attorney General
Department of Justice
Government Law Section
1300 I Street, 17th Floor
Sacramento, CA 95814

Executive Director
Public Employees Retirement System
Benefit Application Services
P. O. Box 942702
Sacramento, CA 94229-2702

Director
Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814-4174



RECEIVED

SEP 19 2001

COMMISSION ON
STATE MANDATES

September 14, 2001

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of August 28, 2001, the Department of Finance has reviewed the draft parameters and guidelines submitted by the County of Tuolumne (claimant) related to specified costs incurred under Chapter No. 908, Statutes of 1996 et al., which was determined to result in reimbursable state mandated costs by the Commission on State Mandates (Claim No. CSM-97-TC-15 "Sex Offenders: Disclosure by Law Enforcement Officers").

As the result of our review, we concur with the parameters and guidelines provided. As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your August 28, 2001 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Todd Jerue, Principal Program Budget Analyst at (916) 445-8913 or Jim Lombard, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Calvin Smith

S. Calvin Smith
Program Budget Manager

Attachment

PROOF OF OF SERVICE

Test Claim Name: "Sex Offenders: Disclosure by Law Enforcement Officers"

Test Claim Number: CSM-97-TC-15

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8th Floor, Sacramento, CA 95814.

On September 14, 2001, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8th Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

B-8

State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

B-29

Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

County of Tuolumne c/o

Mr. Allan Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Mr. Ted Buckley, Legal Advisor
Long Beach Unified School District
1515 Hughes Way, Room 235
Long Beach, CA 90810-1839

Ms. Annette Chinn
Cost Recovery Systems
705-2 East Bidwell Street #294
Folsom, CA 95630

Ms. Jeane Green, Fiscal Technician
County of Tuolumne
Sheriff's Department
28 N. Lower Sunset Drive
Sonora, CA 95370

Mr. Glenn Haas, Bureau Chief
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Mr. Steve Keil
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941

Mr. John P. Logger
SB-90 Coordinator
Auditor-Controller-Recorder
County of San Bernardino
222 West Hospitality Lane
San Bernardino, CA 92415-0018

Ms. Laurie McVay
DMG-MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Mr. Paul Minney
Spector, Middleton, Young & Minney, LLP
7 Park Center Drive
Sacramento, CA 95825

Mr. Andy Nichols, Senior Manager
Centration, Inc.
8316 Red Oak, Suite 101
Rancho Cucamonga, CA 91730

Ms. Connie Peters (D-27)
Youth & Adult Correctional Agency
1100 11th Street, 4th floor
Sacramento, CA 95814

Mr. Jim Spano
State Controller's Office
Division of Audits (B-8)
300 Capitol Mall, Suite 518
Sacramento, CA 95814.

Ms. Eleanor Watanabe
Riverside Co. Sheriff's Office
4095 Lemon Street
PO Box 512
Riverside, CA 92502

Mr. David Wellhouse
Wellhouse & Associates
9175 Kiefer Blvd., Suite 121
Sacramento, CA 95826

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 14, 2001, at Sacramento, California.


Mary Latorre

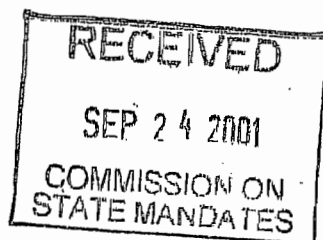
1808



KATHLEEN CONNELL
Controller of the State of California

September 21, 2001

Ms. Shirley Opie
Assistant Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814



RE: PROPOSED PARAMETERS AND GUIDELINES FOR
SEX OFFENDERS: DISCLOSURE BY LAW ENFORCEMENT OFFICERS
CSM97-TC-15, STATUTES OF 1995, CHAPTERS 908 AND 909

Dear Ms. Opie:

We have reviewed the proposed Parameters and Guidelines (P's & G's) submitted by the County of Tuolumne for the above referenced subject matter. The Controller's Office (SCO) recommends the Commission on State Mandates (COSM) review the proposed P's & G's to ensure that all reimbursable components are in accordance with the adopted Statement of Decision. However, here are some suggested amendments; additions are underlined, deletions have strike-throughs.

II ELIGIBLE CLAIMANTS

~~"Counties, cities, and cities and counties are eligible claimants."~~

Any county, city, city and county, or community college that has incurred increased costs as a direct result of this mandate is eligible to claim reimbursement of these costs.

This suggested change is necessary to clarify eligible and add community colleges as claimants pursuant to the definition of a "designated law enforcement entity" in section 290 (n)(1)(I) of the Penal Code (PC). The COSM Statement of Decision states "local law enforcement agencies" and does not clearly identify eligible claimants.

III. PERIOD OF REIMBURSEMENT

"Section 17557 of the Government Code (GC), prior to its amendment by Statutes of 1998, Chapter 681, (effective September 22, 1998), stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this mandate was filed on December 30, 1997. Therefore, costs incurred are eligible for reimbursement on or after July 1, 1996." Additionally, Section 290 of the PC is only operative until January 1, 2004. Therefore, costs incurred are eligible for reimbursement on or after July 1, 1996 through December 31, 2003.

This suggested change is necessary to clarify the period of reimbursable and that this mandate is only operative until January 1, 2004. The Statement of Decision adopted by the COSM does not contain an operative ending date.

"Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1)(A) of the GC, all claims for reimbursement of the initial years' costs shall be submitted within 120 days of notification by the State controller of the issuance of claiming instructions."

This suggested change is necessary to correct the subdivision reference from section 17561, subdivision (d)(1) of the GC to subdivision (d)(1)(A).

IV. REIMBURSABLE ACTIVITIES

A. ~~Administrative Costs~~

1. ~~Developing, updating and implementing...~~
2. ~~Other activities to establish...~~

A. One Time Costs

1. Developing, updating implementing internal policies, procedure and manuals as necessary to implement Sex Offenders: Disclosure by Law Enforcement Officers, "Megan's Law".
2. Other activities to establish a single or multi-agency system for law enforcement agencies to perform the mandated activities.

3. Provide notification to every registered sex offender, within the claimant's jurisdiction convicted prior to January 1, 1997, of the reduction of time to register from 14 days to 5 days.

The suggested change is preferable since costs should be classified as either a one-time cost or on-going costs. The adopted Statement of Decision does not specifically identify administrative costs as reimbursable. The SCO requests that the COSM review the items identified above as one-time costs to determine if they are reimbursable. At a minimum, the administrative costs identified by the County of Tuolumne should be considered only for the expanded list of crimes that require registration by convicted sex offenders within a specific time frame.

The Claim Preparation boilerplate language has been recently revised and the COSM should use the latest acceptable language.

If you have any question, please contact Ginny Brummels, Manager of the Local Reimbursements Section, at (916)324-0256.

Sincerely,


WALTER BARNES

Chief Deputy Controller, Finance

WB:WGA:glb

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300

SACRAMENTO, CA 95814

TELEPHONE: (916) 323-3562

FAX: (916) 445-0278

E-mail: csminfo@csm.ca.gov



February 15, 2002

Mr. Allan Burdick

MAXIMUS

4320 Auburn Blvd., Suite 2000

Sacramento, CA 95841

*And Affected State Agencies and Interested Parties (See Attached Mailing List)***RE: Pre-hearing on Draft Parameters and Guidelines***Sex Offenders: Disclosure by Law Enforcement Officers*, CSM 97-TC-15

Penal Code Sections 290 and 290.4

Statutes of 1996, Chapters 908 and 909

Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821 and 822

Statutes of 1998, Chapters 485, 550, 927, 928, 929 and 930

Dear Mr. Burdick:

At your request, a pre-hearing on the draft parameters and guidelines for the above-named program has been scheduled for **February 27, 2002**, at 10:00 a.m. at the offices of the Commission on State Mandates, 980 Ninth Street, Suite 300, Sacramento, California. This pre-hearing has been scheduled to discuss reimbursable activities and proposed boilerplate language. The claimant requested to use *Sex Offenders: Disclosure by Law Enforcement Officers* to update boilerplate language for cities and counties.

Enclosed are the draft parameters and guidelines for your review prior to the pre-hearing.

The proposed parameters and guidelines are tentatively set for hearing on March 28, 2002. Please contact Cathy Cruz at (916) 323-8218 with questions.

Sincerely,

A handwritten signature in cursive script that reads 'Shirley Opie'.

SHIRLEY OPIE

Assistant Executive Director

cc: Mailing List

Enclosures

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DRAFT

Hearing Date: March 28, 2002
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CLAIMANT'S PROPOSED PARAMETERS AND GUIDELINES, AS MODIFIED BY STAFF

Penal Code Sections 290 and 290.4

Statutes of 1996, Chapters 908 and 909

Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821, and 822

Statutes of 1998, Chapters 485, 550, 927, 928, 929, and 930

*Sex Offenders: Disclosure by Law Enforcement Officers
"Megan's Law"*

I. SUMMARY OF THE MANDATE

~~Penal Code sections 290 and 290.4 require law enforcement officers to disclose information regarding sex offenders in an effort to protect the public. Under specified circumstances, the information provided may include the identities and location of these sex offenders, and require notification to potential victims. The statutes require local law enforcement agencies to provide this information via electronic medium.~~

The test claim legislation (Penal Code sections 290 and 290.4) concerns the registration of certain convicted sex offenders and public disclosure of their identity by local law enforcement agencies. Section 290 specifically relates to the registration of these sex offenders when they are released from incarceration, when they move or change their temporary or permanent residence, or when they update their registration on an annual basis. Section 290 also allows local law enforcement agencies to disclose the identities of sex offenders to the public when a peace officer reasonably suspects that it is necessary to protect the public. Section 290.4 requires the Department of Justice to continually compile and maintain information regarding the identity of convicted sex offenders and to establish a "900" telephone number and CD-ROM program for public access of this information. The Department of Justice must distribute the information obtained on convicted sex offenders by CD-ROM or other electronic medium to local law enforcement agencies who in turn "may" then provide public access to the information. However, municipal police departments of cities with a population of less than 200,000 are exempt from this requirement.

On July 26, 2001-August 23, 2001, the Commission on State Mandates (Commission) adopted its Statement of Decision that partially approving the test claim, legislation constitutes a reimbursable state mandated program upon local governments within the meaning of Article XIII B, Section 6, of the California Constitution and Government Code, Section 17514. The Commission found that the following required activities are a "new program or higher level of service" under article XIII B, section 6 of the California Constitution and result in "costs mandated by the state" within the meaning of Government Code section 17514:

DRAFT

- Submission of Registered Sex Offender information to the Department of Justice's Violent Crime Information Network by Local Law Enforcement Agencies (Pen. Code, §290, subd. (a)(1)(F).)
- Removal of Registration for Decriminalized Conduct (Pen. Code, §290, subd. (a)(2)(F)(i).)
- Pre-register (Pen. Code, §290, subd. (e)(1)(A-C).)
- Contents of Registration Upon Release (Pen. Code, §290, subd. (e)(2)(A-E).)
- Notice of Reduction of Registration Period (Pen. Code, §290, subd. (l)(1).)
- High-Risk Sex Offenders (Pen. Code, §290, subd. (n).)
- CD ROM (Pen. Code, §290.4, subd. (4)(A-C).)
- Records Retention (Pen. Code, §290, subd. (o).)

Lastly, the Commission found that all other activities in the test claim legislation did not constitute a reimbursable state mandated program pursuant to article XIII B, section 6 of the California Constitution.

II. ELIGIBLE CLAIMANTS

Counties, cities, and cities and counties are eligible claimants. Any county, city, city and county, or community college district, that has incurred increased costs as a direct result of this mandate is eligible to claim reimbursement of these costs.

III. PERIOD OF REIMBURSEMENT

Section 17551 of the Government Code section 17551, prior to its amendment by Statutes of 1998, Chapter 681, (effective September 22, 1998), stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this mandate was filed on December 30, 1997. Therefore, costs incurred are eligible for reimbursement on or after July 1, 1996, for compliance with the mandate are reimbursable, unless otherwise specified below.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code, section 17564.

¹ The statutes have different operative dates, therefore the reimbursement period for some activities may begin on a different date.

IV. REIMBURSABLE ACTIVITIES

All direct and indirect costs of labor, materials, supplies, services, training and travel for the performance of For each eligible claimant, the following activities are eligible for reimbursement:

~~A. Administrative Costs~~ One-Time Activities

1. Train staff on implementing the reimbursable activities listed in Section IV, activities 2 through 14, of these parameters and guidelines. (One-time activity per employee.)
2. Developing, updating and implementing internal policies, procedures, and manuals as necessary to implement *Sex Offenders: Disclosure by Law Enforcement Officers, "Megan's Law."*
2. ~~Other activities to establish a single or multi-agency system for law enforcement agencies to perform the mandated activities.~~

~~B. One-Time Costs~~

3. ~~Provide a~~ Notify iation to every registered sex offender convicted prior to January 1, 1997, within the claimant's jurisdiction of the reduction in the time to register or reregister from 14 days to 5 days. (Pen. Code, § 290, subd. (1)(1).)² (Reimbursement period begins October 8, 1997.)

~~C. On-Going Costs~~ Activities

4. Developing, collecting, and transmitting sex offender registrations from the local jurisdiction directly into the Department of Justice Violent Crime Information Network. (Pen. Code, § 290, subd. (a)(1)(F).)³ (Reimbursement period begins January 1, 1999.)
5. Removal of a sex offender's registration from the local jurisdiction's files within 30 days of receiving notice to do so from the Department of Justice. (Pen. Code, § 290, subd. (a)(2)(F)(i).)⁴ (Reimbursement period begins October 8, 1997.)
6. If the local law enforcement agency is the current place of incarceration, the pre-registration of a convicted sex offender, including the obtaining of a current photograph and fingerprints of the offender as well as a written statement relaying information as is required by the Department of Justice. Notify iation to the sex offender as acknowledgement of the information contained within the pre-registration statement. (Pen. Code, § 290, subd. (e)(1)(A-C).)⁵ (Reimbursement period begins October 8, 1997.)

² As amended by Statutes of 1997, chapter 821, an urgency statute effective October 8, 1997.

³ As added by Statutes of 1998, chapter 929.

⁴ As added by Statutes of 1997, chapter 821.

⁵ As added by Statutes of 1997, chapter 821.

7. ~~Verification~~ that the sex offender's signed statement contains the name and address of the offender's employer, and the address of the offender's place of employment if it is different from the employer's main address. (Pen. Code, § 290, subd. (e)(2)(A).)⁶ (Reimbursement period begins October 8, 1997.)
8. ~~Verification~~ that the offender's registration includes information related to any vehicle regularly driven by the offender, including license number, make, model, and such other information as may be requested by the Department of Justice. (Pen. Code, § 290, subd. (e)(2)(C).)⁷ (Reimbursement period begins October 8, 1997.)
9. ~~Verification~~ that the convicted sex offender has adequate proof of residence, as determined by the Department of Justice; proof of residence is currently limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents, or any other information that the registering official believes is reliable. If the offender does not have a residence, and no reasonable expectation of obtaining a residence in the foreseeable future, then the local law enforcement agency shall obtain a statement to that effect from the sex offender. (Pen. Code, § 290, subd. (e)(2)(E).)⁸ (Reimbursement period begins January 1, 1999.)
10. Provide to high-risk sex offenders a printed form from the Department of Justice regarding reevaluation in order to be removed from the high-risk classification. (Pen. Code, § 290, subd. (n)(1)(G)(ii).)⁹ (Reimbursement period begins September 25, 1996.)
11. Maintain such photographs and statistical information concerning high-risk sex offender as is received quarterly from the Department of Justice. (Pen. Code, § 290, subd. (n)(2).)¹⁰ (Reimbursement period begins September 25, 1996.)
12. For sheriff's departments in each county, municipal police departments of cities with a population of more than 200,000, and other applicable law enforcement agencies, to provide the necessary equipment, and staff assistance and security for the public to access the sex offender information provided by the Department of Justice on CD-ROM or other electronic medium, and to obtaining information regarding from individuals requesting access to the CD-ROM as required by the Department of Justice or state law. (Pen. Code, § 290.4, subd. (a)(4)(A).)¹¹ (Reimbursement period: September 25, 1996 through December 31, 2003.)

⁶ As added and amended by Statutes of 1997, chapter 821.

⁷ As added and amended by Statutes of 1997, chapter 821.

⁸ As added by Statutes of 1998, chapters 928 and 929.

⁹ As added by Statutes of 1996, chapter 908, an urgency statute effective September 25, 1996.

¹⁰ As added by Statutes of 1996, chapter 908.

¹¹ As added by Statutes of 1996, chapter 908. Penal Code section 290.4 contains a sunset provision wherein it is only operative until January 1, 2004.

13. Maintain records of those persons requesting access to the information contained within the CD-ROM or other electronic medium for a minimum of five years, and costs of destruction of such records at the end of such time. Additionally, a record of the means and dates of dissemination of information regarding high-risk offenders must be maintained for a minimum of five years, and costs of destruction at the end of such time. (Pen. Code, § 290, subd. (o).)¹³ *(Reimbursement period begins October 8, 1997.)*

V. CLAIM PREPARATION AND SUBMISSION

Each claim for reimbursement pursuant to this mandate must be timely filed and identify each of the following cost elements for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV of this document.

SUPPORTING DOCUMENTATION

Claimed costs shall be supported by the following cost element information:

A. Direct Costs Reporting

Direct costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions, those costs incurred specifically for the reimbursable activities. Direct costs that are eligible for reimbursement are:

1. Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity, the productive hourly rate, and related employee benefits.

Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

¹³ As amended by Statutes of 1997, chapter 821.

2. Materials and Supplies

~~Expenditure claims are limited to those that can be identified as direct costs of this mandate. List the costs of the materials and supplies consumed specifically for the purposes of this mandate. Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting cash discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on an appropriate and recognized method of costing, consistently applied.~~

3. Contracted Services

~~Contracted services for participation of employer representatives in contract negotiation planning sessions will be reimbursed. Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.~~

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

4.5. Travel

~~Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points and travel costs.~~

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

5-6. Training

The cost of training an employee to perform the mandated activities is eligible for reimbursement. Identify the employee(s) by name or job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging and per diem. This data, if too voluminous to be included with the claim, shall be maintained by the local agency.

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Costs Rates

Indirect costs are defined as costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost-allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total

~~allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or~~

- ~~2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.~~

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

All other claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) pursuant to the Office of Management and Budget (OMB) Circular A-87.

VI. SUPPORTING DATA

A. Source Documents

For auditing purposes, all incurred costs claimed shall must be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program reimbursable activities. Documents may include, but are not limited to, worksheets, employee time records or time logs, cost allocation reports (system generated), invoices, receipts, purchase orders, contracts, agendas, training packets with signatures and logs of attendees, calendars, declarations, and data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements.

B. Record Keeping

All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code, section 17558.5, subdivision (a). Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the State Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended.* See the State Controller's claiming instructions regarding retention of required documentation during the audit period.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a direct result of the subject mandate same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, ~~federal funds collected~~, federal funds and other state funds shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

IX. PARAMETERS AND GUIDELINES AMENDMENTS

Parameters and guidelines may be amended pursuant to Title 2, California Code of Regulations, section 1183.2.

* This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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Commission on State Mandates

List Date: 01/08/1998

Mailing Information Draft Staff Analysis

Mailing List

Claim Number 97-TC-15 **Claimant** Claim of County of Tuolumne-Sheriff's Department

Subject Penal Code sections 290 and 290.4
908/96
Issue Sex Offenders: Disclosure by Law Enforcement Officers

Mr. Ted Buokley, Legal Advisor
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Legal Services Office
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Claimant

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Sheriff's Department
28 N. Lower Sunset Drive
Sonora CA 95370

Tel: (209) 535-5815
FAX: (209) 533-5860

Claimant

Claim Number

97-TC-15

Claimant

Claim of County of Tuolumne-Sheriff's
Department

Penal Code sections 290 and 290.4

Subject

908/96

Issue

Sex Offenders: Disclosure by Law Enforcement Officers

Mr. Glenn Haas, Bureau Chief (B-8)

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Auditor-Controller's Office

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Interested Person

Mr. Steve Kell,

California State Association of Counties

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Interested Person

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Ms. Laurie McVay,

MAXIMUS

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Interested Person

Penal Code sections 290 and 290.4

Subject

908/96

Issue

Sex Offenders: Disclosure by Law Enforcement Officers

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12150 Tributary Pint Drive Suite 140
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Interested Person

Ms. Connie Peters (D-27),
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Interested Person

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300

SACRAMENTO, CA 95814

NE: (916) 323-3562

(916) 445-0278

E-mail: csmInfo@esm.ca.gov



March 7, 2002

VIA FACSIMILE ONLY

Mr. Allan Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

And Affected State Agencies and Interested Parties (See Attached Mailing List)

RE: Draft Parameters and Guidelines*Sex Offenders: Disclosure by Law Enforcement Officers, CSM 97-TC-15*

Penal Code Sections 290 and 290.4

Statutes of 1996, Chapters 908 and 909

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Dear Mr. Burdick:

Enclosed are the draft parameters and guidelines for your review and comment. Please submit comments in writing no later than Tuesday, March 12, 2002.

The proposed parameters and guidelines are set for hearing on March 28, 2002. Please contact Cathy Cruz at (916) 323-8218 with questions.

Sincerely,

A handwritten signature in cursive script that reads 'Shirley Opie'.

SHIRLEY OPIE

Assistant Executive Director

cc: Mailing List

Enclosure

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DRAFT

Hearing Date: March 28, 2002
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Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code, section 17564.

¹ The statutes have different operative dates, therefore the reimbursement period for some activities may begin on a different date.

IV. REIMBURSABLE ACTIVITIES

~~All direct and indirect costs of labor, materials, supplies, services, training and travel for the performance of~~ For each eligible claimant, the following activities are eligible for reimbursement:

A. ~~Administrative Costs~~ One-Time Activities

1. Train staff on implementing the reimbursable activities listed in Section IV, activities 2 through 13, of these parameters and guidelines. (One-time activity per employee.)
2. ~~Developing, updating and implementing internal policies, procedures, and manuals as necessary to implement~~ *Sex Offenders: Disclosure by Law Enforcement Officers, "Megan's Law."*
2. ~~Other activities to establish a single or multi-agency system for law enforcement agencies to perform the mandated activities.~~

B. One Time Costs

3. ~~Provide a~~ Notify iation to every registered sex offender convicted prior to January 1, 1997, within the claimant's jurisdiction of the reduction in the time to register or reregister from 14 days to 5 days. (Pen. Code, § 290, subd. (1)(1).)² (Reimbursement period begins October 8, 1997.)

CB. ~~On-Going Costs~~ Activities

4. ~~Developing, collecting, and transmitting~~ sex offender registrations from the local jurisdiction directly into the Department of Justice Violent Crime Information Network. (Pen. Code, § 290, subd. (a)(1)(F).)³ (Reimbursement period begins January 1, 1999.)
5. ~~Removal of a sex offender's registration from the local jurisdiction's files within 30 days of receiving notice to do so from the Department of Justice. (Pen. Code, § 290, subd. (a)(2)(F)(i).)⁴ (Reimbursement period begins October 8, 1997.)~~
6. If the local law enforcement agency is the current place of incarceration, the pre-registration of a convicted sex offender, including the obtaining of a current photograph and fingerprints of the offender as well as a written statement relaying information as is required by the Department of Justice. Notify iation to the sex offender as acknowledgement of the information contained within the pre-registration statement. (Pen. Code, § 290, subd. (e)(1)(A-C).)⁵ (Reimbursement period begins October 8, 1997.)

² As amended by Statutes of 1997, chapter 821, an urgency statute effective October 8, 1997.

³ As added by Statutes of 1998, chapter 929.

⁴ As added by Statutes of 1997, chapter 821.

⁵ As added by Statutes of 1997, chapter 821.

7. Verification that the sex offender's signed statement contains the name and address of the offender's employer, and the address of the offender's place of employment if it is different from the employer's main address. (Pen. Code, § 290, subd. (e)(2)(A).)⁶ (Reimbursement period begins October 8, 1997.)
8. Verification that the offender's registration includes information related to any vehicle regularly driven by the offender, including license number, make, model, and such other information as may be requested by the Department of Justice. (Pen. Code, § 290, subd. (e)(2)(C).)⁷ (Reimbursement period begins October 8, 1997.)
9. Verification that the convicted sex offender has adequate proof of residence, as determined by the Department of Justice; proof of residence is currently limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents, or any other information that the registering official believes is reliable. If the offender does not have a residence, and no reasonable expectation of obtaining a residence in the foreseeable future, then the local law enforcement agency shall obtain a statement to that effect from the sex offender. (Pen. Code, § 290, subd. (e)(2)(E).)⁸ (Reimbursement period begins January 1, 1999.)
10. Provide to high-risk sex offenders a printed form from the Department of Justice regarding reevaluation in order to be removed from the high-risk classification. (Pen. Code, § 290, subd. (n)(1)(G)(ii).)⁹ (Reimbursement period begins September 25, 1996.)
11. Maintain such photographs and statistical information concerning high-risk sex offenders as is received quarterly from the Department of Justice. (Pen. Code, § 290, subd. (n)(2).)¹⁰ (Reimbursement period begins September 25, 1996.)
12. For sheriff's departments in each county, municipal police departments of cities with a population of more than 200,000, and police departments or community college districts, to provide the necessary equipment, and staff assistance and security for the public to access the sex offender information provided by the Department of Justice on CD-ROM or other electronic medium, and to obtaining information regarding from individuals requesting access to the CD-ROM as required by the Department of Justice or state law. (Pen. Code, § 290.4, subd. (a)(4)(A).)¹¹ (Reimbursement period: September 25, 1996 through December 31, 2003.)

⁶ As added and amended by Statutes of 1997, chapter 821.

⁷ As added and amended by Statutes of 1997, chapter 821.

⁸ As added by Statutes of 1998, chapters 928 and 929.

⁹ As added by Statutes of 1996, chapter 908, an urgency statute effective September 25, 1996.

¹⁰ As added by Statutes of 1996, chapter 908.

¹¹ As added by Statutes of 1996, chapter 908. Penal Code section 290.4 contains a sunset provision wherein it is only operative until January 1, 2004.

13. Maintain records of those persons requesting access to the information contained within the CD-ROM or other electronic medium for a minimum of five years, and costs of destruction of such records at the end of such time. Additionally, a record of the means and dates of dissemination of information regarding high-risk offenders must be maintained for a minimum of five years, and costs of destruction at the end of such time. (Pen. Code, § 290, subd. (o).)¹² *(Reimbursement period begins October 8, 1997.)*

V. CLAIM PREPARATION AND SUBMISSION

~~Each reimbursement~~ Claims for reimbursement this mandate must be timely filed, and identify each of the following cost elements for which reimbursement is claimed under this mandate. Claimed costs must be identified to for each reimbursable activity identified in Section IV of this document.

SUPPORTING DOCUMENTATION

~~Claimed costs shall be supported by the following cost element information:~~

A. Direct Costs Reporting

~~Direct costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions, those costs incurred specifically for the reimbursable activities. Direct costs that are eligible for reimbursement are:~~

1. Salaries and Benefits

~~Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity, the productive hourly rate, and related employee benefits.~~

~~Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.~~

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

¹² As amended by Statutes of 1997, chapter 821.

2. Materials and Supplies

Expenditure claims are limited to those that can be identified as direct costs of this mandate. List the costs of the materials and supplies consumed specifically for the purposes of this mandate. Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting cash discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Contracted services for participation of employer representatives in contract negotiation planning sessions will be reimbursed. Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

4.5. Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points and travel costs.

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

5-6. Training

~~The cost of training an employee to perform the mandated activities is eligible for reimbursement. Identify the employee(s) by name or job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging and per diem. This data, if too voluminous to be included with the claim, shall be maintained by the local agency.~~

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services. This data, if too voluminous to be included with the claim, may be reported in a summary. However, supporting data must be maintained as described in Section VI.

B. Indirect Costs Rates

Indirect costs are ~~defined as costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved.~~ Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Cities and Counties

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

Community Colleges

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the OMB Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. SUPPORTING DATA

A. Source Documents

For auditing purposes, all incurred costs claimed shall must be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of their validity of such costs and their relationship to the state mandated program reimbursable activities. Documents may include, but are not limited to, worksheets, employee time records or time logs, cost allocation reports (system generated), invoices, receipts, purchase orders, contracts, agendas, training packets with signatures and logs of attendees, calendars, declarations, and data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements.

B. Record Keeping

All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code, section 17558.5, subdivision (a). Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the State Controller no later than two years after the end of the calendar year in which the

reimbursement claim is filed or last amended.* See the State Controller's claiming instructions regarding retention of required documentation during the audit period.

VII. OFFSETTING SAVINGS AND ~~OTHER~~ REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a ~~direct~~ result of the ~~subject mandate~~ same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, ~~federal funds collected,~~ federal funds and other state funds shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

IX. PARAMETERS AND GUIDELINES AMENDMENTS

Parameters and guidelines may be amended pursuant to Title 2, California Code of Regulations section 1183.2.

* This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

Commission on State Mandates

List Date: 01/08/1998

Mailing Information Draft Parameters & Guidelines

Mailing List

Claim Number 97-TC-15 Claimant Claim of County of Tuolumne-Sheriff's Department

Subject Penal Code sections 290 and 290.4
908/96
Issue Sex Offenders: Disclosure by Law Enforcement Officers

Mr. Ted Buckley, Legal Advisor
Long Beach Unified School District
Legal Services Office
1515 Hughes Way Room 437
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FAX: (562) 997-8092

Interested Person

Mr. Allan Burdick,
MAXIMUS

4320 Auburn Blvd., Suite 2000
Sacramento CA 95841

Tel: (916) 485-8102
FAX: (916) 485-0111

Claimant

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Cost Recovery Systems

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Department of Finance

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State Agency

Ms. Jean Green, Fiscal Technician
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Sheriff's Department
28 N. Lower Sunset Drive
Sonoma CA 95370

Tel: (209) 535-5815
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Claimant

Claim Number

97-TC-15

Claimant

Claim of County of Tuolumne-Sheriff's
Department

Penal Code sections 290 and 290.4

Subject

908/96

Issue

Sex Offenders: Disclosure by Law Enforcement Officers

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Interested Person

Mr. Steve Kell,
California State Association of Counties

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Interested Person

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Ms. Laurie McVay,
MAXIMUS

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Interested Person

Mr. Paul Minney,
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7 Park Center Drive
Sacramento Ca 95825

Tel: (916) 646-1400

FAX: (916) 646-1300

Interested Person

Claim Number

97-TC-15

Claimant

Claim of County of Tuolumne-Sheriff's
Department

Penal Code sections 290 and 290.4

Subject

908/96

Issue

Sex Offenders: Disclosure by Law Enforcement Officers

Mr. David Wellhouse,
David Wellhouse & Associates, Inc.

9175 Klefer Blvd Suite 121
Sacramento CA 95826

Tel: (916) 368-9244

FAX: (916) 368-5723

Interested Person

RECEIVED

APR 10 2002

COMMISSION ON
STATE MANDATES

PUBLIC HEARING

COMMISSION ON STATE MANDATES

--oOo--

ORIGINAL

TIME: 9:35 a.m.

DATE: Thursday, March 28, 2002

PLACE: Commission on State Mandates
State Capitol, Room 126
Sacramento, California

--oOo--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--oOo--

Reported By:

DANIEL P. FELDHAUS
CSR #6949, RDR, CRR

A P P E A R A N C E S

COMMISSION ON STATE MANDATES

WILLIAM SHERWOOD, Acting Chair (Vice Chair)
Representative of PHILIP ANGELIDES
State Treasurer

JOHN HARRIGAN
Representative of KATHLEEN CONNELL
State Controller

JOHN S. LAZAR
City Council Member
Turlock City Council

CAL SMITH (Chair)
Representative of B. TIMOTHY GAGE, Director
State Department of Finance

JOANN E. STEINMEIER
School Board Member
Arcadia Unified School District

SHERRY WILLIAMS
Representative of TAL FINNEY, Interim Director
State Office of Planning and Research

--oOo--

COMMISSION STAFF

PAULA HIGASHI
Executive Director

CATHERINE M. CRUZ
Staff Services Analyst

SHIRLEY OPIE
Assistant Executive Director

CAMILLE SHELTON
Senior Commission Counsel

PAUL M. STARKEY
Chief Legal Counsel

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1 MEMBER HARRIGAN: Aye.

2 MS. HIGASHI: Mr. Lazar?

3 MEMBER LAZAR: Aye.

4 MS. HIGASHI: Mr. Smith?

5 MEMBER SMITH: Aye.

6 MS. HIGASHI: Ms. Steinmeier?

7 MEMBER STEINMEIER: Aye.

8 MS. HIGASHI: Ms. Williams?

9 MEMBER WILLIAMS: Aye.

10 MS. HIGASHI: Mr. Sherwood?

11 ACTING CHAIR SHERWOOD: Aye.

12 The motion passes. I'd like to thank everyone
13 for coming up today on this issue.

14 MS. HIGASHI: This brings us to Item 4, another
15 set of Proposed Parameters and Guidelines. This is on
16 the "Sex Offenders: Disclosure by Law Enforcement
17 Officers," better known as "Megan's Law." And this item
18 will be presented by Cathy Cruz.

19 MS. CRUZ: Good morning.

20 ACTING CHAIR SHERWOOD: Good morning, Cathy.

21 MS. CRUZ: On August 23, 2001, the Commission
22 adopted its Statement of Decision partially approving the
23 "Sex Offenders: Disclosure by Law Enforcement Officers"
24 test claim. The Commission determined that the test
25 claim legislation, which concerns the registration of

1 certain convicted sex offenders and public disclosure of
2 their identity by local law enforcement agencies, imposed
3 a reimbursable new program upon local agencies and
4 community college district law enforcement agencies by
5 requiring specific new activities.

6 Before you are the claimant's proposed
7 parameters and guidelines, as modified by staff, for the
8 "Sex Offenders: Disclosure by Law Enforcement Officers"
9 program. Staff recommends that the Commission adopt the
10 claimant's proposed parameters and guidelines, as
11 modified by staff, which begins on page nine.

12 Will the parties and representatives please
13 state their names for the record?

14 MS. STONE: Good morning. Pam Stone, on behalf
15 of the County of Tuolumne.

16 MR. BETTENHAUSEN: Gary Bettenhausen, detective,
17 with the Sacramento Sheriff's Department, Sex Offender
18 Registration Detail.

19 MR. BURDICK: And Allan Burdick, on behalf of
20 the California State Association of Counties.

21 MS. GEANACOU: Susan Geanacou, on behalf of the
22 Department of Finance.

23 MR. AL-AMIN: John Al-Amin, Department of
24 Finance.

25 MS. BRUMMELS: Ginny Brummels, State

1 Controller's office.

2 MR. SILVA: Shawn Silva, State Controller's
3 office.

4 ACTING CHAIR SHERWOOD: Thank you.

5 Claimants, do you wish to make a presentation?

6 MS. STONE: Yes. Good morning, Members of the
7 Commission.

8 I would like to relay to you Lieutenant Steely's
9 disappointment at not being able to attend. He is the
10 gentleman from the County of Tuolumne. Unfortunately,
11 they have a very small sheriff's department, and they
12 have recently discovered a number of bodies in
13 New ~~Mellones~~ ^{Melones}, which has necessitated his attention and
14 his inability to attend.

15 We would like to -- on behalf of the County of
16 Tuolumne, I've been authorized to indicate to you that we
17 do concur with staff's Parameters and Guidelines, as
18 modified, and request their adoption.

19 I have with me Detective Bettenhausen from the
20 Sacramento Sheriff's Department. In the event you have
21 any questions pertaining to the program.

22 Thank you.

23 ACTING CHAIR SHERWOOD: Thank you, Ms. Stone.

24 Thank you for coming today, too.

25 MR. BETTENHAUSEN: Thank you.

1 ACTING CHAIR SHERWOOD: Mr. Burdick?

2 MR. BURDICK: Allan Burdick, again, on behalf of
3 the California State Association of Counties, and I'm
4 just here in support of staff's recommendation and to
5 answer any questions that there may be.

6 ACTING CHAIR SHERWOOD: Thank you.

7 The Department of Finance?

8 MR. AL-AMIN: John Al-Amin, Department of
9 Finance.

10 We also are in concurrence with the staff's
11 analysis of the parameters and guidelines, as proposed.

12 ACTING CHAIR SHERWOOD: Thank you, John.

13 The State Controller's Office?

14 MR. SILVA: Actually, it's not as bad as it may
15 seem.

16 ACTING CHAIR SHERWOOD: You've got us worried,
17 Shawn.

18 MR. SILVA: We are also in concurrence.

19 This document raises an issue that you might
20 remember from the last meeting, in which we will
21 incorporate in all of our future comments, and which will
22 then hopefully have incorporated the language and we
23 won't have to go through this. And this is, for this
24 one, on page 16, "supporting data," we discussed this
25 issue before, the fact that the language in "A," "source

1 documents," could potentially be confusing to a claimant.

2 And from our perspective, the primary purpose of
3 that section is to note that all the incurred costs
4 should be traceable to source documents. And the
5 subsequent listing in the second sentence is of documents
6 in general, not specifically source documents. So we
7 want to clarify that a source document is a document that
8 is created contemporaneously with the event in question.
9 Documents may include subsequently-created summaries, and
10 just to clarify so that the claimants don't get confused
11 and end up potentially disposing of source documents when
12 they really need to retain those and submit those with
13 the claim.

14 And as I indicated, we will have proposals for
15 specific language, subsequently, so that we don't have to
16 go through this routine again.

17 ACTING CHAIR SHERWOOD: Thank you, Shawn.

18 I appreciate that. I was hoping in the future we could
19 do that. And I would imagine staff and claimants and
20 yourself could get together and come up with specific
21 instructions. And I think it would be appreciated by all
22 of us.

23 Board Members, do you have any questions?

24 If not, do we have a motion on the staff's
25 recommendation?

1 MEMBER STEINMEIER: I move the staff
2 recommendation.

3 MEMBER WILLIAMS: Second.

4 ACTING CHAIR SHERWOOD: We have a second.

5 All those in favor of the staff recommendation,
6 would you please -- I think we should take roll on this.

7 MS. HIGASHI: Mr. Lazar?

8 MR. LAZAR Yes.

9 MS. HIGASHI: Mr. Smith.

10 MEMBER SMITH: Mr. Chairman and Members, I would
11 recuse myself from this issue, since I've been involved
12 on this, on the other side, in our department.

13 ACTING CHAIR SHERWOOD: Thank you, Mr. Smith.

14 MS. HIGASHI: Ms. Steinmeier?

15 MEMBER STEINMEIER: Aye.

16 MS. HIGASHI: Ms. Williams?

17 MEMBER WILLIAMS: Aye.

18 MS. HIGASHI: Mr. Harrigan?

19 MEMBER HARRIGAN: Aye.

20 MS. HIGASHI: Mr. Sherwood?

21 MEMBER SHERWOOD: Aye.

22 MS. HIGASHI: The motion is carried.

23 MS. STONE: Thank you very much.

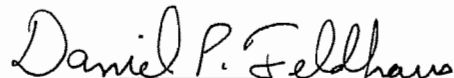
24 ACTING CHAIR SHERWOOD: Thank you for coming
25 today.

REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were reported by me at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings, nor in any way interested in the outcome of the cause named in said matter.

In witness whereof, I have hereunto set my hand this 9th day of April 2002.



DANIEL P. FELDHAUS
CSR #6949, RDR, CRR

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126

Sacramento, California

March 28, 2002

Present: Acting Chairperson William Sherwood
 Representative of the State Treasurer
 Member Cal Smith
 Representative of the Director of the Department of Finance
 Member Sherry Williams
 Representative of the Director of the Office of Planning and Research
 Member John Harrigan
 Representative of the State Controller
 Member Joann Steinmeier
 School Board Member
 Member John Lazar
 City Council Member
Vacant: Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Sherwood called the meeting to order at 9:35 a.m.

APPROVAL OF MINUTES

Item 1 February 28, 2002

Upon motion by Member Steinmeier and second by Member Williams, the minutes were adopted. Member Smith abstained.

PROPOSED CONSENT CALENDAR

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

PROPOSED STATEMENT OF DECISION - TEST CLAIM

Item 2 *Community College District Budget and Financial Reports, Fiscal
Management Reports, and Financial and Compliance Audits*
97-TC-10, 11, 12, Santa Monica Community College District, Claimant
Education Code Sections 84030, 84040 and 84040.5
Statutes of 1977, Chapters 36 and 936; Statutes of 1978, Chapter 207;
Statutes of 1979, Chapter 221; Statutes of 1980, Chapter 884; Statutes
of 1981, Chapters 470, 471, 930 and 1178; Statutes of 1983, Chapter 1206;
Statutes of 1984, Chapters 609 and 1282; Statutes of 1986, Chapter 1486;

Statutes of 1987, Chapter 1025; Statutes of 1990, Chapter 1372; Statutes of 1994, Chapter 20; California Code of Regulations, Title 5, Sections 58300-58301, 58303-58308, 58310-58312, 58314, 58316, 58318, 59100, 59102, 59104, 59106, 59108, 59110, 59112, and 59114

Member Harrigan moved for adoption of the consent calendar. With a second by Member Lazar, the consent calendar, consisting of item 2, was unanimously adopted.

Paula Higashi, Executive Director, noted that the Department of Finance suggested one change for the remainder of the test claim, which is set for the May Commission hearing.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 3 *Brown Act Reform*, CSM 4469
City of Newport Beach, Claimant
Statutes of 1993, Chapter 1136; Statutes of 1993, Chapter 1137; Statutes of 1993, Chapter 1138; Statutes of 1994, Chapter 32 and Consolidation with *Open Meetings Act*, CSM 4257, Statutes of 1986, Chapter 641

Shirley Opie, Assistant Executive Director, presented this item. She noted that eligible claimants that incurred increased costs for preparing and posting an agenda, including closed session items, for the new types of legislative bodies added by Brown Act Reform, can claim reimbursement beginning January 1, 1994. She added that eligible claimants that incurred increased costs to comply with the closed session requirements of Brown Act Reform can claim reimbursement beginning January 1, 1994. Specifically, the closed session requirements include disclosing in an open meeting, prior to holding any closed session, each item to be discussed in closed session; reconvening in open session prior to adjournment and reporting the actions and votes taken in closed session; and providing copies of closed session documents.

Ms. Opie explained that eligible claimants will have three options for claiming reimbursement for the cost of preparing and posting an agenda, including closed session items: 1) actual time, 2) standard time, or 3) a flat rate per meeting. She noted that the basis for the standard time and flat rate was established in the amendment to the Open Meetings Act Parameters and Guidelines adopted by the Commission on November 30, 2000. She indicated that only one reimbursement option may be selected for each type of meeting during a fiscal year, for claiming costs incurred for agenda preparation and posting, including closed session items. She stated that regardless of the reimbursement option selected, eligible claimants must claim actual costs incurred for subsequent reporting of actions taken in closed session, providing copies of documents approved or adopted in closed session, and training.

Further, Ms. Opie noted that all claimants will claim costs for all reimbursable activities for Open Meetings Act and Brown Act Reform under these parameters and guidelines beginning with the annual reimbursement claims filed for 2001-2002 fiscal year costs. However, she explained that until that time, reimbursement for Open Meetings Act must be claimed under that program as prescribed in the State Controller's claiming instructions.

Ms. Opie stated that based on the evidence in the record, ongoing training was included as a reimbursable activity because it constitutes a reasonable method of complying with the mandated activities. However, she noted that it was limited to training the members of only those legislative bodies that actually hold closed sessions, and limited to the activities related to closed session requirements.

Ms. Opie also clarified the proposed changes listed on the errata sheet for this item. She recommended that the Commission adopt the claimant's proposed parameters and guidelines, as modified by staff. She also recommended that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

Parties were represented as follows: Pam Stone and Glen Everroad, representing the City of Newport Beach; Allan Burdick, for the California State Association of Counties; Matt Paulin and Susan Geanacou, for the Department of Finance; and Ginny Brummels and Shawn Silva, for the State Controller's Office.

Ms. Stone concurred with staff's analysis, with one exception. She disagreed with training being limited to just closed-session items. She argued that beginning January 1, 1994, the amendments to the Brown Act brought a substantial number of advisory boards and commissions into the requirements of the Open Meetings Act that were not previously subject to it. Because boards and commissions cannot discuss something at an open meeting that is not on the agenda, she requested that training be expanded to those advisory boards and commissions not previously subject to the Brown Act. Regarding the cost of this training, she explained that most advisory board and commission members are volunteers. Therefore, the only cost would be for the time of the trainer.

Mr. Everroad agreed with Ms. Stone. He added that training is significant in complying with the requirements of the Brown Act and Open Meetings Act.

Mr. Paulin noted that the Department of Finance opposed the inclusion of training because it was not included in the Commission's Statement of Decision.

Mr. Silva agreed with the staff analysis. He also agreed with Mr. Paulin regarding training, adding that it goes beyond what is provided in the Statement of Decision.

Camille Shelton, Senior Commission Counsel, explained that the claimant was requesting training for the entire membership of the body on the entire Brown Act. She indicated that the entire Brown Act has never been the subject of the test claim and that the test claim is limited to five code sections. Therefore, she stated that providing training on the entire Brown Act would be going beyond the scope of the Commission's Statement of Decision. She noted that many of the provisions were originally enacted in 1953, so they may not even qualify for reimbursement under article XIII B, section 6. She also noted that training was not recommended for the activities of preparing and posting an agenda because members of staff, not board members, generally perform these activities.

Further, Ms. Shelton clarified that even though an activity is not in the statement of decision, the Commission has the authority to include activities in the parameters and guidelines that are reasonably related to a mandate.

Member Lazar requested that Ms. Stone respond to Ms. Shelton's comments. Ms. Stone agreed that the claimant's original proposal was for training on the entire Brown Act. However, at this point, she clarified that the claimant is requesting training for those boards and commissions brought under the Brown Act in 1994 since they were previously not subject to it and now have to prepare and post agendas. Although she is aware that staff generally prepares the agenda, she explained that it was not uncommon for board members to raise issues that they would like to address. Therefore, she maintained that board and commission members need to be aware that if they have an issue to be discussed, not only does it need to be on the agenda, but also the terminology needs to be appropriate so that the action desired by the board or commission can be taken.

Member Harrigan asked Ms. Shelton to respond. Ms. Shelton indicated that the claimant was still requesting reimbursement for training the new members on the Brown Act, for which there is no Commission decision. She noted that the old parameters and guidelines for the *Open Meetings Act* test claim did not include a reimbursable component for training. She added that if the Commission was to approve training for board members to prepare and post agendas, this could be seen as inconsistent because the new legislative bodies would be reimbursed for training but the old bodies would not.

Member Smith requested clarification regarding issues not addressed in the statement of decision. Ms. Shelton provided that clarification. Member Smith also requested clarification regarding issues not initially part of the test claim. Ms. Shelton clarified that at the test claim phase, there has to be a ruling on the activities that are expressly required by the test claim statutes. All the Commission can do at the parameters and guidelines phase is include activities that are reasonably related to those activities expressly required by the statute.

Member Lazar asked the claimant to respond. Ms. Stone noted that violating the Brown Act could result in a substantial amount of liability. She stated that the claimant would be satisfied with pro-rated training to the new boards and commissions on the reimbursable activities and consequences for violation.

Member Steinmeier supported Ms. Stone's position. She added that perhaps through the training process of the board members, staff members could be present so that they could all hear the same thing at the same time. She noted that in Los Angeles County, people have been publicly ridiculed for violating the Brown Act.

Member Steinmeier made a motion that was seconded by Member Lazar, to add training for members on the proper agendaing of an item and how those actions have to be displayed on an agenda in order to be able to take action at a particular meeting. Ms. Shelton requested clarification on the motion. Member Steinmeier clarified that she was talking about ongoing training for the members of the new legislative bodies.

Member Harrigan requested the State Controller's Office to comment on the training issue. Ms. Brummels stated that the legislative bodies would need to be clearly defined within the parameters and guidelines, as well as which bodies would be eligible for which time period.

Ms. Geanacou requested that if training is included, it be limited to a one-time basis. Member Harrigan asked for clarification on what was meant by "one-time." Ms. Geanacou clarified

that each person expected to be aware of the requirements would receive training on a time-appropriate basis, depending on when they came on board.

Member Steinmeier commented that as a practical matter, it would cost the same to train all members on an ongoing basis, as it would be to train new members as they come on board. Essentially, every time there is a new member, everybody gets the training again, but not every year for every person.

Ms. Stone added that since most of the members are volunteers, the only cost is for the trainer. In response to Ms. Brummels' comments, Ms. Stone noted that every jurisdiction has different boards and commissions.

Chairperson Sherwood requested staff to comment on Member Steinmeier's motion.

Ms. Shelton stated that the motion is within the Commission's purview because they would be finding that training members on preparing and posting an agenda would be reasonably related to the two activities. Ms. Shelton noted that the legislative bodies that were subject to the Brown Act before, under the Open Meetings Act, would not be reimbursed for training.

Regarding Ms. Brummels' comments about clearly identifying the legislative bodies, Ms. Shelton clarified that they are already identified in the parameters and guidelines, as well as is the reimbursement period, which begins January 1, 1994.

Regarding the issue of training, Mr. Burdick commented that in '93-94, a wide range of changes were made to the Ralph M. Brown Act. As a result of the comprehensive nature, training has to be done on the whole act, because the whole law process has to be explained, as well as what was changed and how they relate to each other.

Ms. Shelton reminded the Commission that the whole act has never been brought before the Commission and there is no Commission decision on the whole Brown Act.

Ms. Stone offered a compromise on the training issue. She proposed a flat 50 percent reimbursement of the cost of training for new boards and commissions brought under the Brown Act in 1994, instead of the pro-rata portion.

In response to a request from Chairperson Sherwood, Ms. Shelton noted that the Commission has the authority to accept Ms. Stone's proposal by finding that the 50 percent would be reasonably related to the Commission's Statement of Decision on reimbursable activities.

Chairperson Sherwood commented that there was not enough information to support 50 percent.

Mr. Silva expressed concern that nothing was written on paper. He suggested continuing this item to the next hearing to allow the claimant to submit its proposal in writing, and allow the state agencies to review the proposal and comment. This would also allow the Commission members time to prepare for and know what is being voted on.

Member Steinmeier withdrew her motion to allow the item to be continued and for the claimant to submit specific language. Member Lazar withdrew his second.

Member Harrigan moved to defer this item until the next agenda. With a second by Member Steinmeier, the motion carried unanimously.

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 4 *Sex Offenders: Disclosure by Law Enforcement Officers*, 97-TC-15
County of Tuolumne, Claimant
Penal Code Sections 290 and 290.4
Statutes of 1996, Chapters 908 and 909; Statutes of 1997, Chapters 17, 80,
817, 818, 819, 820, 821 and 822; Statutes of 1998, Chapters 485, 550,
927, 928, 929 and 930

Cathy Cruz, Program Analyst with the Commission, presented this item. She noted that on August 23, 2001, the Commission adopted its Statement of Decision partially approving the *Sex Offenders: Disclosure by Law Enforcement Officers* test claim. The Commission determined that the test claim legislation, which concerns the registration of certain convicted sex offenders and public disclosure of their identity by local law enforcement agencies, imposed a reimbursable new program upon local agencies and community college district law enforcement agencies by requiring specific new activities. She recommended that the Commission adopt the claimant's proposed parameters and guidelines, as modified by staff.

Parties were represented as follows: Pam Stone, representing the County of Tuolumne; Gary Bettenhausen, for the Sacramento Sheriff's Department; Allan Burdick, for the California State Association of Counties; Susan Geanacou and John Al-Amin, for the Department of Finance; and Ginny Brummels and Shawn Silva, for the State Controller's Office.

Ms. Stone noted that Lieutenant Steely from the County of Tuolumne was not able to attend. On behalf of the County of Tuolumne, Ms. Stone concurred with the parameters and guidelines, as modified by staff, and requested that the Commission adopt them.

Mr. Burdick supported staff's recommendation.

Mr. Al-Amin and Mr. Silva also concurred with the staff analysis and recommendation. However, Mr. Silva clarified that the primary purpose of the Source Documents section under Supporting Data is to note that all incurred costs should be traceable to source documents. He added that the subsequent listing in the second sentence is of documents in general, and not of source documents. He further clarified that a source document is a document that is created contemporaneously with the event in question, and documents may include subsequently created summaries. He noted that he made this clarification so that claimants do not dispose of source documents when they really need to be retained and submitted with claims. He indicated that the State Controller's Office will propose specific language in the future.

Member Steinmeier made a motion that was seconded by Member Williams, to approve staff's recommendation. Member Smith recused himself from this item because he has been involved on the other side of this issue in his department. The motion carried 5-0.

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES AMENDMENT

- Item 5 *Handicapped & Disabled Students*, 00-PGA-03 & 00-PGA-04
County of Los Angeles and County of Stanislaus, Claimants
Statutes of 1984, Chapter 1747; Statutes of 1985, Chapter 1274;
Sections 60000-60020, Title 2, California Code of Regulations, Division 9

Item 5 was postponed at the request of the claimant. Ms. Higashi noted that this item may get postponed as far as the June agenda.

EXECUTIVE DIRECTOR'S REPORT

- Item 6 Workload, Legislation, Next Agenda

Ms. Higashi noted the following:

- *Workload.* In the last couple of months, litigation workload has increased. Staff is working on putting together a master calendar of the cases that are anticipated to be scheduled and heard through next June. Staff is also in the process of interviewing potential law clerks.
- *Legislation.* Staff met with the Legislative Analyst's Office staff, the Department of Finance staff, and the State Controller's Office staff on the issue of how deficiencies are reported to the Department of Finance, what happens with the deficiency letter, and how an amount is finally appropriated. Throughout the last month, staff also met with the Bureau of State Audits staff as they finalized the audit report, which has been issued. In addition, staff held its second annual mandates training for legislative staff.
- *Rulemaking Workshop.* The scheduled workshop will be rescheduled because a number of groups that would like to participate will not be able to attend.
- *Budget.* The budget will be heard on April 23rd in the Assembly, and on May 1st in the Senate. The Legislative Analyst's Office has recently requested copies of all of the parameters and guidelines, statements of decision, and statewide cost estimates for all of the mandates that are being proposed for this year's claims bill. The claims bill is with the Assembly Budget Committee and has not yet been officially introduced.
- *Future Hearing Agendas.* The proposed rulemaking order scheduled for the April agenda will be moved since the workshop will be rescheduled. The Pupil Promotion and Retention test claim and Investment Reports incorrect reduction claim are set for April. A couple of test claims may be set for the May agenda. Items may be moved to the June agenda because of the litigation schedule.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *County of San Bernardino v. State of California, et al.*, Case Number BS055882 in the Superior Court of the State of California, County of Los Angeles.
CSM Case No. 01-L-01 [*San Bernardino MIA*]
2. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number D038027, in the Appellate Court of California, Fourth Appellate District, Division 1.
CSM Case No. 01-L-13 [*Pupil Expulsions*]
3. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.
CSM Case No. 01-L-04 [*Physical Performance Tests*]
4. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number C037645, in the Appellate Court of California, Third Appellate District.
CSM Case No. 01-L-11 [*School Site Councils*]
5. *City of San Diego v. Commission on State Mandates, et al.*, Case Number D039095 in the Appellate Court of California, Fourth Appellate District.
CSM Case No. 01-L-15 [*Special Use; Eminent Domain*]
6. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles.
CSM Case No. 01-L-07 [*Domestic Violence*]
7. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number BS069611, in the Superior Court of the State of California, County of Los Angeles.
CSM Case No. 01-L-08 [*SEMS*]
8. *County of San Bernardino v. Commission on State Mandates of the State of California et al.*, Case Number BS07309, in the Superior Court of the State of California, County of Los Angeles.
Case No. 01-L-10 [*Property Tax Administration*]
9. *County of San Diego v. Commission on State Mandates, et al.*, Case Number D039471, in the Appellate Court of the State of California, County of San Diego, Fourth Appellate District.
Case No. 01-L-16 [*San Diego MIA*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526.

Hearing no further comments, Chairperson Sherwood adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Sherwood reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Hearing no further business and upon motion by Member Harrigan and second by Member Steinmeier, Chairperson Sherwood adjourned the meeting at 11:08 a.m.



PAULA HIGASHI

Executive Director

COMMISSION ON STATE MANDATES

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SACRAMENTO, CA 95814
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March 29, 2002

Mr. Allan Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Mr. Glen Haas, Bureau Chief
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

And Affected State Agencies and Interested Parties (See Attached Mailing List)

RE: **Adopted Parameters and Guidelines**
Sex Offenders: Disclosure by Law Enforcement Officers, CSM 97-TC-15
Penal Code Sections 290 and 290.4
Statutes of 1996, Chapters 908 and 909
Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821 and 822
Statutes of 1998, Chapters 485, 550, 927, 928, 929 and 930

Dear Mr. Burdick and Mr. Haas:

On March 28, 2002, the Commission on State Mandates adopted the parameters and guidelines for this test claim.

A copy of the final parameters and guidelines is enclosed. If you have any questions, please contact Ms. Cathy Cruz at (916) 323-8218.

Sincerely,

A handwritten signature in cursive script that reads 'Paula Higashi'.

PAULA HIGASHI
Executive Director

Enclosure

J:/mandates/1997/97tc15/psgs/032802adoptpgtrns

1864

MAILED: Mail List
FAXED: 3/29/03
DATE: 3/29/03
INITIAL: VS
FILE: ✓
WORKING BINDER: _____

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Penal Code Sections 290 and 290.4;
Statutes of 1996, Chapters 908 and 909;
Statutes of 1997, Chapters 17, 80, 817, 818,
819, 820, 821, and 822; Statutes of 1998,
Chapters 485, 550, 927, 928, 929, and 930

Filed on December 30, 1997, and
Amended on July 14, 1999;

By County of Tuolumne, Claimant.

NO. CSM 97-TC-15

*Sex Offenders: Disclosure by Law
Enforcement Officers*

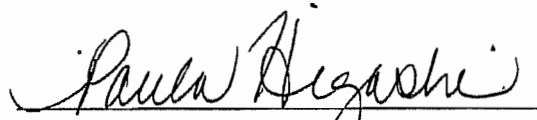
ADOPTION OF PARAMETERS AND
GUIDELINES PURSUANT TO
GOVERNMENT CODE SECTION
17557 AND TITLE 2, CALIFORNIA
CODE OF REGULATIONS, SECTION
1183.12

(Adopted on March 28, 2002)

ADOPTED PARAMETERS AND GUIDELINES

The attached Parameters and Guidelines is hereby adopted in the above-entitled matter.

This Decision shall become effective on March 29, 2002.


PAULA HIGASHI, Executive Director

Parameters and Guidelines

Penal Code Sections 290 and 290.4

Statutes of 1996, Chapters 908 and 909

Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821, and 822

Statutes of 1998, Chapters 485, 550, 927, 928, 929, and 930

Sex Offenders: Disclosure by Law Enforcement Officers *("Megan's Law")*

I. SUMMARY OF THE MANDATE

The test claim legislation (Penal Code sections 290 and 290.4) concerns the registration of certain convicted sex offenders and public disclosure of their identity by local law enforcement agencies. Section 290 specifically relates to the registration of these sex offenders when they are released from incarceration, when they move or change their temporary or permanent residence, or when they update their registration on an annual basis. Section 290 also allows local law enforcement agencies to disclose the identities of sex offenders to the public when a peace officer reasonably suspects that it is necessary to protect the public. Section 290.4 requires the Department of Justice to continually compile and maintain information regarding the identity of convicted sex offenders and to establish a "900" telephone number and CD-ROM program for public access of this information. The Department of Justice must distribute the information obtained on convicted sex offenders by CD-ROM or other electronic medium to local law enforcement agencies who in turn "may" then provide public access to the information. However, municipal police departments of cities with a population of less than 200,000 are exempt from this requirement.

On August 23, 2001, the Commission on State Mandates (Commission) adopted its Statement of Decision partially approving the test claim. The Commission found that the following required activities are a "new program or higher level of service" under article XIII B, section 6 of the California Constitution and result in "costs mandated by the state" within the meaning of Government Code section 17514:

- Submission of Registered Sex Offender information to the Department of Justice's Violent Crime Information Network by Local Law Enforcement Agencies (Pen. Code, §290, subd. (a)(1)(F).)
- Removal of Registration for Decriminalized Conduct (Pen. Code, §290, subd. (a)(2)(F)(i).)
- Pre-register (Pen. Code, §290, subd. (e)(1)(A-C).)
- Contents of Registration Upon Release (Pen. Code, §290, subd. (e)(2)(A-E).)
- Notice of Reduction of Registration Period (Pen. Code, §290, subd. (l)(1).)
- High-Risk Sex Offenders (Pen. Code, §290, subd. (n).)

- CD ROM (Pen. Code, §290.4, subd. (4)(A-C).)
- Records Retention (Pen. Code, §290, subd. (o).)

Lastly, the Commission found that all other activities in the test claim legislation did not constitute a reimbursable state mandated program pursuant to article XIII B, section 6 of the California Constitution.

II. ELIGIBLE CLAIMANTS

Any county, city, city and county, or community college district, that has incurred increased costs as a direct result of this mandate is eligible to claim reimbursement of these costs, except as limited in Section IV, activity 12.

III. PERIOD OF REIMBURSEMENT

Government Code section 17551, prior to its amendment by Statutes of 1998, chapter 681, (effective September 22, 1998), stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this mandate was filed on December 30, 1997. Therefore, costs incurred on or after July 1, 1996, for compliance with the mandate are reimbursable, unless otherwise specified below.¹

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, the following activities are eligible for reimbursement:

A. One-Time Activities

1. Train staff on implementing the reimbursable activities listed in Section IV, activities 2 through 13, of these parameters and guidelines. (One-time activity per employee.)
2. Develop internal policies, procedures, and manuals to implement *Sex Offenders: Disclosure by Law Enforcement Officers* ("Megan's Law").
3. Notify every registered sex offender convicted prior to January 1, 1997, within the claimant's jurisdiction of the reduction in the time to register or reregister from 14 days to 5 days. (Pen. Code, § 290, subd. (1)(1).)² (*Reimbursement period begins October 8, 1997.*)

¹ The statutes have different operative dates, therefore the reimbursement period for some activities may begin on a different date.

² As amended by Statutes of 1997, chapter 821, an urgency statute effective October 8, 1997.

B. On-Going Activities

4. Develop, collect, and transmit sex offender registrations from the local jurisdiction directly into the Department of Justice Violent Crime Information Network. (Pen. Code, § 290, subd. (a)(1)(F).)³ (*Reimbursement period begins January 1, 1999.*)
5. Remove a sex offender's registration from the local jurisdiction's files within 30 days of receiving notice to do so from the Department of Justice. (Pen. Code, § 290, subd. (a)(2)(F)(i).)⁴ (*Reimbursement period begins October 8, 1997.*)
6. If the local law enforcement agency is the current place of incarceration, pre-registration of a convicted sex offender, including the obtaining of a current photograph and fingerprints of the offender as well as a written statement relaying information as is required by the Department of Justice. Notify the sex offender as acknowledgement of the information contained within the pre-registration statement. (Pen. Code, § 290, subd. (e)(1)(A-C).)⁵ (*Reimbursement period begins October 8, 1997.*)
7. Verify that the sex offender's signed statement contains the name and address of the offender's employer, and the address of the offender's place of employment if it is different from the employer's main address. (Pen. Code, § 290, subd. (e)(2)(A).)⁶ (*Reimbursement period begins October 8, 1997.*)
8. Verify that the offender's registration includes information related to any vehicle regularly driven by the offender, including license number, make, model, and such other information as may be requested by the Department of Justice. (Pen. Code, § 290, subd. (e)(2)(C).)⁷ (*Reimbursement period begins October 8, 1997.*)
9. Verify that the convicted sex offender has adequate proof of residence, as determined by the Department of Justice; proof of residence is currently limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents, or any other information that the registering official believes is reliable. If the offender does not have a residence, and no reasonable expectation of obtaining a residence in the foreseeable future, then the local law enforcement agency shall obtain a statement to that effect from the sex offender. (Pen. Code, § 290, subd. (e)(2)(E).)⁸ (*Reimbursement period begins January 1, 1999.*)
10. Provide high-risk sex offenders a printed form from the Department of Justice regarding reevaluation in order to be removed from the high-risk classification. (Pen. Code, § 290, subd. (n)(1)(G)(ii).)⁹ (*Reimbursement period begins September 25, 1996.*)

³ As added by Statutes of 1998, chapter 929.

⁴ As added by Statutes of 1997, chapter 821.

⁵ As added by Statutes of 1997, chapter 821.

⁶ As added and amended by Statutes of 1997, chapter 821.

⁷ As added and amended by Statutes of 1997, chapter 821.

⁸ As added by Statutes of 1998, chapters 928 and 929.

⁹ As added by Statutes of 1996, chapter 908, an urgency statute effective September 25, 1996.

11. Maintain such photographs and statistical information concerning high-risk sex offenders as is received quarterly from the Department of Justice. (Pen. Code, § 290, subd. (n)(2).)¹⁰ (*Reimbursement period begins September 25, 1996.*)
12. For sheriff's departments in each county, municipal police departments of cities with a population of more than 200,000, and police departments or community college districts, to provide the necessary equipment, and staff assistance for the public to access the sex offender information provided by the Department of Justice on CD-ROM or other electronic medium, and to obtain information from individuals requesting access to the CD-ROM as required by the Department of Justice. (Pen. Code, § 290.4, subd. (a)(4)(A).)¹¹ (*Reimbursement period: September 25, 1996 through December 31, 2003.*)
13. Maintain records of those persons requesting access to the information contained within the CD-ROM or other electronic medium for a minimum of five years, and costs of destruction of such records at the end of such time. Additionally, a record of the means and dates of dissemination of information regarding high-risk offenders must be maintained for a minimum of five years, and costs of destruction at the end of such time. (Pen. Code, § 290, subd. (o).)¹² (*Reimbursement period begins October 8, 1997.*)

V. CLAIM PREPARATION AND SUBMISSION

Each reimbursement claim for this mandate must be timely filed. Each of the following cost elements must be identified for each reimbursable activity identified in Section IV of this document.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. Direct costs that are eligible for reimbursement are:

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

¹⁰ As added by Statutes of 1996, chapter 908.

¹¹ As added by Statutes of 1996, chapter 908. Penal Code section 290.4 contains a sunset provision wherein it is only operative until January 1, 2004.

¹² As amended by Statutes of 1997, chapter 821.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services. This data, if too voluminous to be included with the claim, may be reported in a summary. However, supporting data must be maintained as described in Section VI.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Cities and Counties

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

Community Colleges

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the OMB Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. SUPPORTING DATA

A. Source Documents

For auditing purposes, all incurred costs claimed must be traceable to source documents that show evidence of their validity and relationship to the reimbursable activities. Documents may include, but are not limited to, worksheets, employee time records or time logs, cost allocation reports (system generated), invoices, receipts, purchase orders, contracts, agendas, training packets with signatures and logs of attendees, calendars, declarations, and data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements.

B. Record Keeping

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the State Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended.* See the State Controller's claiming instructions regarding retention of required documentation during the audit period.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

IX. PARAMETERS AND GUIDELINES AMENDMENTS

Parameters and guidelines may be amended pursuant to Title 2, California Code of Regulations section 1183.2.

* This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 350, Sacramento, California 95814.

March 29, 2002, I served the:

Adopted Parameters and Guidelines

Sex Offenders: Disclosure by Law Enforcement Officers, CSM 97-TC-15

Penal Code Sections 290 and 290.4

Statutes of 1996, Chapters 908 and 909

Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821 and 822

Statutes of 1998, Chapters 485, 550, 927, 928, 929 and 930

by placing a true copy thereof in an envelope addressed to:

Mr. Allan Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Mr. Glen Haas, Bureau Chief
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 29, 2002, at Sacramento, California.



VICTORIA SORIANO

Commission on State Mandates

List Date: 01/08/1998

Mailing Information

Mailing List

Claim Number 97-TC-15 Claimant Claim of County of Tuolumne-Sheriff's Department

Penal Code sections 290 and 290.4

Subject 908/96

Issue Sex Offenders: Disclosure by Law Enforcement Officers

Mr. Ted Buckley, Legal Advisor
Long Beach Unified School District
Legal Services Office
1515 Hughes Way Room 437
Long Beach CA 90810-1839

Tel: (562) 997-8251
FAX: (562) 997-8092

Interested Person

Mr. Allan Burdick,
MAXIMUS

4320 Auburn Blvd., Suite 2000
Sacramento CA 95841

Tel: (916) 485-8102
FAX: (916) 485-0111

Claimant

Ms. Annette Chinn,
Cost Recovery Systems

705-2 East Bidwell Street #294
Folsom CA 95630

Tel: (916) 939-7901
FAX: (916) 939-7801

Interested Person

Ms. Susan Geanacou, Senior Staff Attorney (A-15)
Department of Finance

915 L Street, 11th Floor Suite 1190
Sacramento CA 95814

Tel: (916) 445-3274
FAX: (916) 327-0220

State Agency

Ms. Jean Green, Fiscal Technician
County of Tuolumne
Sheriff's Department
28 N. Lower Sunset Drive
Sonora CA 95370

Tel: (209) 535-5815
FAX: (209) 533-5860

Claimant

Claim Number

97-TC-15

Claimant

Claim of County of Tuolumne-Sheriff's
Department

Penal Code sections 290 and 290.4

Subject

908/96

Issue

Sex Offenders: Disclosure by Law Enforcement Officers

Mr. Glenn Haas, Bureau Chief (B-8)

State Controller's Office

Division of Accounting & Reporting

3301 C Street Suite 500

Sacramento CA 95816

Tel: (916) 445-8757

FAX: (916) 323-4807

State Agency

Mr. Leonard Kaye, Esq.,

County of Los Angeles

Auditor-Controller's Office

500 W. Temple Street, Room 603

Los Angeles CA 90012

Tel: (213) 974-8864

FAX: (213) 617-8106

Interested Person

Mr. Steve Keil,

California State Association of Counties

1100 K Street Suite 101

Sacramento CA 95814-3941

Tel: (916) 327-7523

FAX: (916) 441-5507

Interested Person

Mr. Tom Lutzenberger, Principal Analyst (A-15)

Department of Finance

915 L Street, 6th Floor

Sacramento CA 95814

Tel: (916) 445-8913

FAX: (916) 327-0225

State Agency

Ms. Laurie McVay,

MAXIMUS

4320 Auburn Blvd. Suite 2000

Sacramento CA 95841

Tel: (916) 485-8102

FAX: (916) 485-0111

Interested Person

Mr. Paul Minney,

Spector, Middleton, Young & Minney, LLP

7 Park Center Drive

Sacramento Ca 95825

Tel: (916) 646-1400

FAX: (916) 646-1300

Interested Person

Claim Number

97-TC-15

Claimant

Claim of County of Tuolumne-Sheriff's
Department

Penal Code sections 290 and 290.4

Subject

908/96

Issue

Sex Offenders: Disclosure by Law Enforcement Officers

Mr. Andy Nichols, Senior Manager
Centration, Inc.

12150 Tributary Pint Drive Suite 140
Gold River CA 95670

Tel: (916) 351-1050

FAX: (916) 351-1020

Interested Person

Ms. Connie Peters (D-27),
Youth & Adult Correctional Agency

1100 11th Street 4th Floor
Sacramento CA 95814

Tel: (916) 323-6001

FAX: (916) 442-2637

State Agency

Mr. Keith B. Petersen, President
Sixten & Associates

5252 Balboa Avenue Suite 807
San Diego CA 92117

Tel: (858) 514-8605

FAX: (858) 514-8645

Ms. Barbara Redding,
County of San Bernadino
Recorder's Office

222 West Hospitality Lane
San Bernardino CA 92415-0018

Tel: (909) 386-8850

FAX: (909) 386-8830

Interested Person

Mr. Steve Shields,
Shields Consulting Group, Inc.

1536 36th Street
Sacramento CA 95816

Tel: (916) 454-7310

FAX: (916) 454-7312

Interested Person

Mr. Jim Spano, (B-8)
State Controller's Office
Division of Audits (B-8)
300 Capitol Mall, Suite 518
Sacramento CA 95814

Tel: (916) 323-5849

FAX: (916) 327-0832

State Agency

Claim Number

97-TC-15

Claimant

Claim of County of Tuolumne-Sheriff's
Department

Penal Code sections 290 and 290.4

Subject

908/96

Issue

Sex Offenders: Disclosure by Law Enforcement Officers

Mr. David Wellhouse,
David Wellhouse & Associates, Inc.

9175 Kiefer Blvd Suite 121
Sacramento CA 95826

Tel: (916) 368-9244
FAX: (916) 368-5723

Interested Person

COMMISSION ON STATE MANDATES

NOTICE AND AGENDA¹

State Capitol, Room 437
Sacramento, California

November 21, 2002

9:30 A.M. - PUBLIC SESSION

I. CALL TO ORDER AND ROLL CALL

II. APPROVAL OF MINUTES

Item 1 October 24, 2002

III. PROPOSED CONSENT CALENDAR (action)

Note: If there are no objections to any of the following action items designated by an asterisk (), the Executive Director will include it on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.*

IV. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

Note: Witnesses will be sworn in en masse before consideration of Items 2-5

A. TEST CLAIMS

Item 2 *Standardized Account Code Structure, 97-TC-17*
Brentwood Union School District, Claimant
Statutes 1993, Chapter 237 (SB 94)
Statutes 1995, Chapter 525 (AB 438)
Statutes 1997, Chapter 299 (AB 1578)
State Board of Education's Revision of the California
School Accounting Manual (Part II)

Item 3 *Eastview Optional Attendance Area, 99-TC-01*
Palos Verdes Peninsula Unified School District, Claimant
Statutes 1998, Chapter 868 (SB 1681) and
Test Claim Amendment 01-TC-06
Education Code Section 48200
As Amended by Statutes 1987, Chapter 1452 (SB 998)

¹ This public meeting notice is available on the Internet at <http://www.csm.ca.gov>.

B. PROPOSED STATEMENTS OF DECISION – TEST CLAIM

Item 4* *Charter Schools II*, 99-TC-03
Los Angeles County Office of Education and
San Diego Unified School District, Claimants
Education Code Sections 47602, 47604, 47605, 47605.5, 47607, 47613
(formerly 47613.7), 47613.5, and 47614
Statutes 1998, Chapters 34 (AB 544) and 673 (AB 2417)
California Code of Regulations, Title 5, Sections 15410-15428
California Department of Education Memorandum dated April 28, 1999

Item 5* *Redevelopment Agencies – Tax Disbursement Reporting*, 99-TC-06
County of Los Angeles, Claimant
Health & Safety Code Sections 33672.7
Statutes 1998, Chapter 39 (SB 258)

V. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

STATEWIDE COST ESTIMATES

Item 6* *Brown Act Reform*, CSM 4469
City of Newport Beach, Claimant
Statutes 1993, Chapter 1136 (AB 1426)
Statutes 1993, Chapter 1137 (SB 36)
Statutes 1993, Chapter 1138 (SB 1140)
Statutes 1994, Chapter 32 (SB 752) and
Consolidation with *Open Meetings Act*, CSM 4257
Statutes 1986, Chapter 641 (AB 2674)

Item 7* *Sex Offenders: Disclosure by Law Enforcement Officers*, 97-TC-15
County of Tuolumne, Claimant
Penal Code Sections 290 and 290.4
Statutes 1996, Chapters 908 (AB 1562) and 909 (SB 1378)
Statutes 1997, Chapters 17 (SB 947), 80 (AB 213), 817 (AB 59),
818 (AB 1303), 819 (SB 314), 820 (SB 882), 821 (AB 290) and 822 (SB 1078)
Statutes 1998, Chapters 485 (AB 2803), 550 (AB 2799), 927 (AB 796),
928 (AB 1927), 929 (AB 1745) and 930 (AB 1078)

VI. EXECUTIVE DIRECTOR'S REPORT (info)

Item 8 Workload, Legislation, Next Agenda

VII. PUBLIC COMMENT

VIII. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526. (Closed Executive Session may begin at this time or may begin earlier on this day and reconvene at the end of the meeting.)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 01-L-04 [*Physical Performance Tests*]
2. *County of San Bernardino v. Commission on State Mandates of the State of California, et al.*, Case Number BS07309, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 01-L-10 [*Property Tax Administration*]
3. *City of San Diego v. Commission on State Mandates, et al.*, Case Number D039095 in the Appellate Court of the State of California, Fourth Appellate District, Division 1. CSM Case No. 01-L-15 [*Special Use; Eminent Domain*]
4. *County of San Diego v. Commission on State Mandates, et al.*, Case Number D039471, in the Appellate Court of the State of California, Fourth Appellate District, Division 1. CSM Case No. 01-L-16 [*San Diego MIA*]
5. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number B156870, in the Appellate Court of the State of California, Second Appellate District, CSM Case No. 01-L-17 [*Domestic Violence*]
6. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number B158835, in the Appellate Court of the State of California, Second Appellate District, CSM Case No. 01-L-18 [*SEMS*]
7. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 02CS00994, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 02-L-01 [*School Bus Safety II*].
8. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number S109125, in the Supreme Court of the State of California. CSM Case No. 02-L-02 [*Pupil Expulsions*]
9. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa*

Clara, Case Number S109219, in the Supreme Court of the State of California.
CSM Case No. 02-L-03 [*School Site Councils*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.

IX. REPORT FROM CLOSED EXECUTIVE SESSION

ADJOURNMENT

For information, contact:

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
(916) 445-0278 Fax

Item 7 Proposed Statewide Cost Estimate

Penal Code Sections 290 and 290.4

Statutes 1996, Chapters 908 and 909

Statutes 1997, Chapters 17, 80, 817, 818, 819, 820, 821, and 822

Statutes 1998, Chapters 485, 550, 927, 928, 929, and 930

Sex Offenders: Disclosure by Law Enforcement Officers
(*"Megan's Law"*)

Executive Summary

The test claim legislation imposes new requirements on local law enforcement agencies regarding notification to Department of Justice of registration of certain convicted sex offenders and provides for public disclosure of the identity of registered sex offenders by local law enforcement agencies.

The County of Tuolumne filed the test claim on December 30, 1999 and amended the test claim on July 14, 1999. The Commission adopted the Statement of Decision on August 23, 2001, and the Parameters and Guidelines on March 28, 2002. Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by October 1, 2002. The SCO provided the unaudited actual claim totals to the Commission on November 5, 2002.

Methodology

To arrive at the total statewide cost estimate:

- Staff used unaudited actual claims filed with the SCO for prior fiscal years (FY) by eligible claimants.¹
- Staff projected totals for FY 2002-03 by multiplying the FY 2001-02 claim total filed by claimants with the SCO times the implicit price deflator for 2002-03 (2.2%), as forecasted by the Department of Finance. Staff projected totals for FY 2003-04 by multiplying the 2002-03 estimate by the implicit price deflator for 2003-04 (3.2%).

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of \$32,707,000 for costs incurred in complying with the *Sex Offenders: Disclosure by Law Enforcement Officers ("Megan's Law")* provisions.

¹ State Controller's Office data as of November 5, 2002.

Proposed Statewide Cost Estimate

Penal Code Sections 290 and 290.4

Statutes 1996, Chapters 908 and 909

Statutes 1997, Chapters 17, 80, 817, 818, 819, 820, 821, and 822

Statutes 1998, Chapters 485, 550, 927, 928, 929, and 930

*Sex Offenders: Disclosure by Law Enforcement Officers
("Megan's Law")*

Mandate Background

The test claim legislation imposes new requirements on local law enforcement agencies regarding notification to Department of Justice of registration of certain convicted sex offenders and provides for public disclosure of the identity of registered sex offenders by local law enforcement agencies. Municipal police departments of cities with a population of less than 200,000 are exempt from this requirement.

The County of Tuolumne filed the test claim on December 30, 1999 and amended the test claim on July 14, 1999. The Commission adopted the Statement of Decision on August 23, 2001, and the Parameters and Guidelines on March 28, 2002. Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by October 1, 2002. The (SCO) provided the unaudited actual claim totals to the Commission on November 5, 2002.

Period of Reimbursement

All mandated costs incurred on or after July 1, 1996, for compliance with the mandate are reimbursable, unless otherwise specified below.²

Eligible Claimants

Any county, city, city and county, or community college district, that has incurred increased costs as a direct result of this mandate is eligible to claim reimbursement of these costs, except as limited in Section IV, activity 12.

² The statutes have different operative dates; therefore the reimbursement period for some activities may begin on a different date.

Reimbursable Activities

For each eligible claimant, the following activities are eligible for reimbursement:

A. One-Time Activities

1. Train staff on implementing the reimbursable activities listed in Section IV, activities 2 through 13. (One-time activity per employee.)
2. Develop internal policies, procedures, and manuals to implement *Sex Offenders: Disclosure by Law Enforcement Officers ("Megan's Law")*.
3. Notify every registered sex offender convicted prior to January 1, 1997, within the claimant's jurisdiction of the reduction in the time to register or reregister from 14 days to 5 days. (Pen. Code, § 290, subd. (1)(1).)³ (*Reimbursement period begins October 8, 1997.*)

B. On-Going Activities

4. Develop, collect, and transmit sex offender registrations from the local jurisdiction directly into the Department of Justice Violent Crime Information Network. (Pen. Code, § 290, subd. (a)(1)(F).)⁴ (*Reimbursement period begins January 1, 1999.*)
5. Remove a sex offender's registration from the local jurisdiction's files within 30 days of receiving notice to do so from the Department of Justice. (Pen. Code, § 290, subd. (a)(2)(F)(i).)⁵ (*Reimbursement period begins October 8, 1997.*)
6. If the local law enforcement agency is the current place of incarceration, pre-registration of a convicted sex offender, including the obtaining of a current photograph and fingerprints of the offender as well as a written statement relaying information as is required by the Department of Justice. Notify the sex offender as acknowledgement of the information contained within the pre-registration statement. (Pen. Code, § 290, subd. (e)(1)(A-C).)⁶ (*Reimbursement period begins October 8, 1997.*)
7. Verify that the sex offender's signed statement contains the name and address of the offender's employer, and the address of the offender's place of employment if it is different from the employer's main address. (Pen. Code, § 290, subd. (e)(2)(A).)⁷ (*Reimbursement period begins October 8, 1997.*)
8. Verify that the offender's registration includes information related to any vehicle regularly driven by the offender, including license number, make, model, and such other information as may be requested by the Department of Justice. (Pen. Code, § 290, subd. (e)(2)(C).)⁸ (*Reimbursement period begins October 8, 1997.*)
9. Verify that the convicted sex offender has adequate proof of residence, as determined by the Department of Justice; proof of residence is currently limited to a California driver's

³ As amended by Statutes 1997, chapter 821, an urgency statute effective October 8, 1997.

⁴ As added by Statutes 1998, chapter 929.

⁵ As added by Statutes 1997, chapter 821.

⁶ As added by Statutes 1997, chapter 821.

⁷ As added and amended by Statutes 1997, chapter 821.

⁸ As added and amended by Statutes 1997, chapter 821.

license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents, or any other information that the registering official believes is reliable. If the offender does not have a residence, and no reasonable expectation of obtaining a residence in the foreseeable future, then the local law enforcement agency shall obtain a statement to that effect from the sex offender. (Pen. Code, § 290, subd. (e)(2)(E).)⁹ (*Reimbursement period begins January 1, 1999.*)

10. Provide high-risk sex offenders a printed form from the Department of Justice regarding reevaluation in order to be removed from the high-risk classification. (Pen. Code, § 290, subd. (n)(1)(G)(ii).)¹⁰ (*Reimbursement period begins September 25, 1996.*)
11. Maintain such photographs and statistical information concerning high-risk sex offenders as is received quarterly from the Department of Justice. (Pen. Code, § 290, subd. (n)(2).)¹¹ (*Reimbursement period begins September 25, 1996.*)
12. For sheriff's departments in each county, municipal police departments of cities with a population of more than 200,000, and police departments or community college districts, to provide the necessary equipment, and staff assistance for the public to access the sex offender information provided by the Department of Justice on CD-ROM or other electronic medium, and to obtain information from individuals requesting access to the CD-ROM as required by the Department of Justice. (Pen. Code, § 290.4, subd. (a)(4)(A).)¹² (*Reimbursement period: September 25, 1996 through December 31, 2003.*)
13. Maintain records of those persons requesting access to the information contained within the CD-ROM or other electronic medium for a minimum of five years, and costs of destruction of such records at the end of such time. Additionally, a record of the means and dates of dissemination of information regarding high-risk offenders must be maintained for a minimum of five years, and costs of destruction at the end of such time. (Pen. Code, § 290, subd. (o).)¹³ (*Reimbursement period begins October 8, 1997.*)

⁹ As added by Statutes 1998, chapters 928 and 929.

¹⁰ As added by Statutes 1996, chapter 908, an urgency statute effective September 25, 1996.

¹¹ As added by Statutes 1996, chapter 908.

¹² As added by Statutes 1996, chapter 908. Penal Code section 290.4 contains a sunset provision wherein it is only operative until January 1, 2004.

¹³ As amended by Statutes 1997, chapter 821.

Assumptions

Staff made the following assumptions:

- The claiming data is accurate, although unaudited.
- There may be late or amended claims filed. However, if actual claims exceed the statewide cost estimate, the SCO will report the deficiency to the Legislature for inclusion in the next year's claims bill.¹⁴

Methodology

To arrive at the total statewide cost estimate:

- Staff used unaudited actual claims filed with the SCO for prior fiscal years (FY) by eligible claimants.¹⁵
- Staff projected totals for FY 2002-03 by multiplying the FY 2001-02 claim total filed by claimants with the SCO times the implicit price deflator for 2002-03 (2.2 %), as forecasted by the Department of Finance. Staff projected totals for FY 2003-04 by multiplying the 2002-03 estimate by the implicit price deflator for 2003-04 (3.2 %).

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of \$32,707,000 for costs incurred in complying with the *Sex Offenders: Disclosure of law Enforcement Officers (Megan's Law)* provisions.

¹⁴ To date, the City of San Diego, the City and County of San Francisco, and the Counties of San Bernardino and San Diego have not submitted claims.

¹⁵ State Controller's Office data as of November 5, 2002.

Following is a breakdown of estimated total costs per fiscal year:

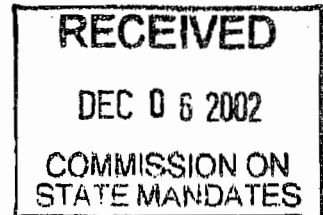
Fiscal Year	# of Community College District (CCD) Claims Filed with the SCO	Amount Claimed by CCDs	# of City/County Claims Filed with the SCO	Amount Claimed by Cities/ Counties	Combined Claim Totals
1996-97	0	0	108	\$1,184,009	\$1,184,009
1997-98	0	0	169	\$3,400,076	\$3,400,076
1998-99	0	0	193	\$3,532,179	\$3,532,179
1999-00	0	0	202	\$4,675,008	\$4,675,008
2000-01	0	0	206	\$5,084,985	\$5,084,985
2001-02	1	\$2,097	185	\$4,818,381	\$4,820,478
2002-03 (2.2%) ¹⁶	n/a	\$2,143	n/a	\$4,924,385	\$4,926,528
2003-04 (3.2%) ¹⁷	n/a	\$2,212	n/a	\$5,081,965	\$5,084,177
Subtotals		\$6,452		\$32,700,988	
Total					\$32,707,440
Statewide Cost Estimate Total (Rounded)					\$32,707,000

Because the reported costs are prior to audit and partially based on estimates, the statewide cost estimate of \$32,707,440 has been rounded to \$32,707,000.

¹⁶ Implicit Price Deflator as forecast by Department of Finance.

¹⁷ *Ibid.*

PUBLIC HEARING
COMMISSION ON STATE MANDATES



--o0o--

ORIGINAL

TIME: 9:40 a.m.

DATE: Thursday, November 21, 2002

PLACE: Commission on State Mandates

State Capitol, Room 437

Sacramento, California

--o0o--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--o0o--

Reported By:

JAMIE LYNNE OELRICHS

CSR #8086

NC
CR

Northern California Court Reporters

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ANNETTE PORINI, Chair

Representative of B. TIMOTHY GAGE
Director

State Department of Finance

WILLIAM SHERWOOD, Vice Chair

Representative of PHILIP ANGELIDES

State Treasurer

SHERRY WILLIAMS

Representative of TAL FINNEY

Interim Director, Office of Planning & Research

JOHN S. LAZAR

City Council Member

Turlock City Council

--o0o--

COMMISSION STAFF PRESENT

PAULA HIGASHI, Executive Director

PAUL STARKEY, Chief Legal Counsel

CAMILLE SHELTON, Staff Counsel

--o0o--

I N D E X

Proceedings	Page
Item 7 Sex Offenders: Disclosure by Law Enforcement Officers, 97-TC-15 County of Tuolumne, Claimant Penal Code Sections 290 and 290.4, Statutes 1996, Chapters 908 (AB 1562) and 909 (SB 1378) Statutes 1997, Chapters 17 (SB 947) 80 (AB 213), 817 (AB 59), 818 (AB 1303), 819 (SB 314), 820 (SB 882) 821 (AB 290) and 822 (SB 1078) Statutes 1998, Chapters 485 (AB 2803) 550 (AB 2799), 927. . .	7
IV. Test Claims	
Item 3 Eastview Optional Attendance Area, 99-TC-01 Palos Verdes Unified School District, Claimant.	9
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--o0o--

1 comments from members? Motion?

2 MEMBER WILLIAMS: Move to adopt.

3 MEMBER LAZAR: Second.

4 CHAIR PORINI: Okay. Looks like we can do
5 that unanimously. Thank you. Much easier to count
6 with a smaller number.

7 MS. HIGASHI: This brings us to the
8 proposed consent calendar. It consists of items 4,
9 5, and 7. Four and 5 are adoption of the proposed
10 statements of decision on Charter Schools II, and
11 Redevelopment Agencies, Tax Disbursement Reporting.

12 Item 7 is adoption of the proposed
13 statewide cost estimate on sex offenders, Disclosure
14 by Law Enforcement Officers.

15 CHAIR PORINI: We have the consent
16 calendar before us. Do I have a motion?

17 VICE CHAIR SHERWOOD: Move to adopt.

18 MEMBER WILLIAMS: Second.

19 CHAIR PORINI: All right. We have a
20 motion and a second to adopt the consent calendar.
21 All those in favor, indicate with aye.

22 MEMBER LAZAR: Aye.

23 MEMBER WILLIAMS: Aye.

24 CHAIR PORINI: Aye.

25 VICE CHAIR SHERWOOD: Aye.

1 CHAIR PORINI: Opposed? Consent calendar
2 carries.

3 MS. HIGASHI: Item 2 has been postponed at
4 the request of the claimant. And item 6 has been
5 postponed by staff. Both items will be set for
6 hearing in January.

7 CHAIR PORINI: This is the smallest agenda
8 we've had in four years.

9 VICE CHAIR SHERWOOD: I believe so.

10 MS. HIGASHI: I think the only one that
11 would be shorter would be the one we had in SB1033.

12 CHAIR PORINI: Short because there was
13 only one item.

14 MS. HIGASHI: We only had one item. But
15 we've also -- we're also following a period where
16 we've had the most litigation, I think, in the
17 history of the Commission. So that's another
18 factor.

19 VICE CHAIR SHERWOOD: One comment on
20 number 2, here. I hope everyone is clear on that we
21 will be hearing this in January. I think your
22 letter was very direct and to the point.

23 MS. HIGASHI: Yes. It's set for
24 January.

25 CHAIR PORINI: All right. Then we'll go

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)

) ss.

COUNTY OF SACRAMENTO)

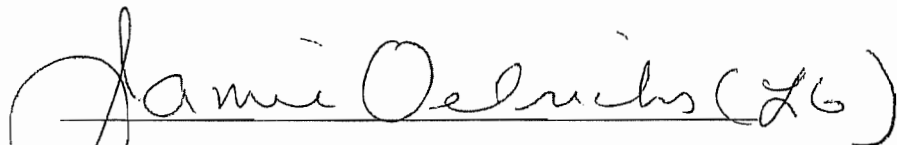
I, JAMIE LYNNE OELRICHS, a Certified
Shorthand Reporter, licensed by the state of
California and empowered to administer oaths and
affirmations pursuant to Section 2093 (b) of the
Code of Civil Procedure, do hereby certify:

That the said proceedings were recorded
stenographically by me and were thereafter
transcribed under my direction via computer-assisted
transcription.

That the foregoing transcript is a true
record of the proceedings which then and there took
place.

That I am a disinterested person to said
action.

IN WITNESS WHEREOF, I have subscribed my
name on December 3, 2002.

A handwritten signature in cursive script that reads "Jamie Oelrichs (26)". The signature is written in dark ink and is positioned above the printed name.

Jamie Lynne Oelrichs

Certified Shorthand Reporter No. 8086

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 437

Sacramento, California

November 21, 2002

Present: Chairperson Annette Porini
Representative of the Director of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Sherry Williams
Representative of the Director of the Office of Planning and Research
Member John Lazar
City Council Member

Absent: Walter Barnes, Representative of the State Controller

Vacant: Local Elected Official
Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Porini called the meeting to order at 9:40 a.m.

APPROVAL OF MINUTES

Item 1 October 24, 2002

Upon motion by Member Williams and second by Member Lazar, the minutes were unanimously adopted.

PROPOSED CONSENT CALENDAR

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS,
TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

PROPOSED STATEMENTS OF DECISION - TEST CLAIMS

- Item 4 *Charter Schools II*, 99-TC-03
Los Angeles County Office of Education and
San Diego Unified School District, Claimants
Education Code Sections 47602, 47604, 47605, 47605.5, 47607, 47613
(formerly 47613.7), 47613.5, and 47614
Statutes 1998, Chapters 34 (AB 544) and 673 (AB 2417)
California Code of Regulations, Title 5, Sections 15410-15428
California Department of Education Memorandum dated April 28, 1999
- Item 5 *Redevelopment Agencies – Tax Disbursement Reporting*, 99-TC-06
County of Los Angeles, Claimant
Health & Safety Code Section 33672.7
Statutes 1998, Chapter 39 (SB 258)

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS,
TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

PROPOSED STATEWIDE COST ESTIMATE

- Item 7 *Sex Offenders: Disclosure by Law Enforcement Officers, 97-TC-15*
County of Tuolumne, Claimant
Penal Code Sections 290 and 290.4
Statutes 1996, Chapters 908 (AB 1562) and 909 (SB 1378)
Statutes 1997, Chapters 17 (SB 947), 80 (AB 213), 817 (AB 59),
818 (AB 1303), 819 (SB 314), 820 (SB 882), 821 (AB 290) and 822 (SB 1078)
Statutes 1998, Chapters 485 (AB 2803), 550 (AB 2799), 927 (AB 796),
928 (AB 1927), 929 (AB 1745), and 930 (AB 1078)

Member Sherwood moved for adoption of the consent calendar, which consisted of items 4, 5, and 7. With a second by Member Williams, the consent calendar was unanimously adopted.

**HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7**

TEST CLAIMS

- Item 2 *Standardized Account Code Structure, 97-TC-17*
Brentwood Union School District, Claimant
Statutes 1993, Chapter 237 (SB 94)
Statutes 1995, Chapter 525 (AB 438)
Statutes 1997, Chapter 299 (AB 1578)
State Board of Education's Revision of the California
School Accounting Manual (Part II)

Item 2 was postponed at the claimant's request. Member Sherwood confirmed that Item 2 will be heard in January as stated in the [Executive Director's] letter to claimant.

- Item 3 *Eastview Optional Attendance Area, 99-TC-01*
Palos Verdes Peninsula Unified School District, Claimant
Statutes 1998, Chapter 868 (SB 1681) and
Test Claim Amendment 01-TC-06
Education Code Section 48200
As Amended by Statutes 1987, Chapter 1452 (SB 998)

Camille Shelton, Senior Commission Counsel, presented this item. She noted that this test claim was originally presented to the Commission on August 29, 2002. At that hearing, the Commission continued the matter for approval of the staff analysis on the issue of whether the test claim legislation imposed a higher level of service.

Ms. Shelton noted that this test claim was filed on two statutes. The uncodified test claim statute grants those parents and legal guardians who reside in the area of Eastview, the choice of sending their children to school in either Palos Verdes Peninsula Unified School District or the Los Angeles Unified School District. The second test claim statute, Education Code section 48200, as amended in 1987, generally provides that each person between the ages of six and 18 years is subject to compulsory full-time education in the school district in which the residence of either the parent or legal guardian is located.

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Present: Chairperson Annette Porini
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Member John Lazar
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Ms. Shelton stated that staff prepared two separate analyses. Staff Analysis One, which is essentially the same staff analysis presented in August, denies the test claim for the following reasons:

1. The uncodified test claim statute does not impose any mandated activities on claimant.
2. The state, through the test claim legislation, has not mandated a new program or higher level of service to house and educate Eastview students, and has not shifted the financial responsibility of housing and educating students from the state to the claimant district; and
3. A claim for the loss of rental income is not subject to article XIII B, section 6, because lost rental income does not constitute an expenditure.

Staff Analysis Two is new. In this analysis, staff confirmed that the test claim legislation qualifies as a program under article VIII B, section 6. The analysis also supports the Commission finding that the test claim legislation imposes a new program or a higher level of service for the activities of receiving and recording the parent election, and determining whether the newly enrolled student resides in the Eastview area. The analysis continues to recommend that the activities of housing and educating Eastview students do not constitute a new program or higher level of service. Staff Analysis Two also provides the Commission with two options for action on the issue of costs mandated by the state.

Option A would deny the test claim based on a finding by the Commission that Government Code section 17556 (a) applies to this claim. This section prohibits reimbursement, if the Commission determines, based on the evidence in the record, that the claimant requested legislative authority to implement the *Eastview Optional Attendance* program.

Option B would approve the test claim for the activities of receiving and recording the parent election and determining whether the newly enrolled student resides in the Eastview area. Under this option, the Commission would find that the claimant did not request legislative authority to implement the *Eastview Optional Attendance* program, but merely provided general support for the legislation. Thus, under this option, Government Code section 17556 (a) does not apply.

Staff recommended that the Commission adopt the analysis and conclusion for Staff Analysis One, which denies the test claim.

Parties were represented as follows: Ira Tobin, Superintendent, Palos Verdes Peninsula Unified School District; Bruce Auld, Deputy Superintendent, Palos Verdes Peninsula Unified School District; David Scribner, with Spector, Middleton, Young & Minney, representing the claimant; Dan Troy, Department of Finance; and Susan Geanacou, Department of Finance.

Mr. Scribner stated that the claimants continue to disagree with Staff Analysis One. He stated that they agree with staff's findings under Staff Analysis Two, Option B in issue 3 and recommended that this be the way the Commission vote in this matter.

Mr. Scribner stated that there was one additional activity that doesn't fall within the *City of San Jose* shift that staff implies in Staff Analysis Two. He stated that *City of San Jose* should not apply and would like the Commission to find that those activities related to parent elections and the costs associated with opening two schools, Dapplegray and Ridgecrest, to house Eastview pupils are reimbursable.

Mr. Scribner argued that the *City of San Jose* case was not applicable. He stated that *City of San Jose* dealt with two entities that are specifically defined in Government Code under 17518, counties and cities. He maintains that staff has expanded *City of San Jose* to include school districts. He noted that the court stated that although cities, counties and school districts are considered political subdivisions of the state under the Constitution, for purposes of subvention analysis, cities and counties and school districts are held out separately. Mr. Scribner noted that school districts are defined under Government Code section 17519, which is separate from the definition of cities and counties. For that reason applying the *City of San Jose* to school districts is an expansion.

Mr. Scribner claimed that the costs and activities associated with reopening Dapplegray and Ridgecrest do not fall under a shift theory for another reason. He stated that in *City of San Jose* the county was allowed to shift costs to the city. He maintains that this has not happened here. Los Angeles Unified School District has not been given the authority to shift these students. Staff says that the parent is the one that begins the shift. Thus, for the shift theory to work, the parent would need to be an entity of the Los Angeles Unified School District acting on the school's behalf. Mr. Scribner asserted that the state's parent election program allowed pupils from the Los Angeles Unified School District to be placed in Palos Verdes, which required the Palos Verdes to engage in activities to open Dapplegray and Ridgecrest. Mr. Scribner maintains that the state-mandated program of parent election and costs related to having to reopen Dapplegray and Ridgecrest are reimbursable because *City of San Jose* does not apply to either. He requested the Commission find that the activities related to parent election and those activities and costs related to reopening Dapplegray and Ridgecrest are reimbursable.

Mr. Auld commented that when it comes to the duty to house and educate children, the Education Code assumes that resources, such as developer fee revenue and ability to pass bonds, come with that duty, so the residents who benefit from the facilities will help pay for the costs. In this instance, developer fees and bond indebtedness that residents pay are associated with Los Angeles Unified School District, not Palos Verdes. Therefore he suggested that this section of code should not be applicable here.

Ms. Shelton commented that the claimant may have misinterpreted the staff analysis. She stated that for the issue of housing and education, Staff Analysis Two allows the Commission to find that housing and education is subject to article XIII B, section 6 because now they have to take these students. However, the next issue the Commission has to look at is whether or not housing and educating those students constitutes a new program or higher level of service. Ms. Shelton stated that the claimant had, until recently, continually argued that the test claim legislation is either a new program or a higher level of service. Recent comments received from the claimant now state that it's not a new program but a higher level of service.

Ms. Shelton explained that the courts of appeal and case law that give the Commission guidance in this area say that you have to read a new program or higher level of service in conjunction with each other. First, they require new acts be mandated by the state. Here, the activities of housing and educating students are not new. She also stated that the activity of reopening the two schools was not mandated by the state, but a discretionary choice left up to the school district. A new program or higher level of service can also be shown under the *Lucia Mar* theory if there has been a shift of financial responsibility from the state to the school districts. For the financial shift theory to work, two factors must be present. The state, at the time of article XIII B, section 6 was enacted, had to have both administrative and financial control over the

program. Ms. Shelton stated that neither of those factors is present here because when that section was enacted, it was the local school districts that had the administrative and partial financial control of school districts. She also stated that the California Supreme Court has clearly held that the primary duty of the local school district is to house and educate students, so there has been no shift.

Ms. Shelton further clarified that *City of San Jose* is just one of the authorities cited. She stated that staff relied on the *Lucia Mar* case, and the *County of Sonoma*, the *City of El Monte*, and the *County of Los Angeles* cases. Further, *City of San Jose* is just another case in a series of cases that hold that *Lucia Mar* is not applicable. In this case, the test in *Lucia Mar* does apply whether or not the claimant is a local agency or a school district, because the interpretation by the court is an interpretation of article XIII B, and it gives direction to the Commission on how to apply article XIII B, section 6.

Ms. Shelton stated that the court looks at who traditionally performs the governmental activity that is the subject of the test claim. In *City of San Jose*, the court determined that counties have traditionally performed the function of detaining and holding people that are arrested. A similar situation applies here. It is not the state that has been traditionally educating the students, but the local school district. Ms. Shelton maintained that under any theory suggested by the court, there has been no showing that the state has imposed a new program or higher level of service to house and educate students.

Ms. Geanacou supported Staff Analysis One and strongly urged its adoption.

Member Williams agreed with Staff Analysis One and made a motion that was seconded by Chairperson Porini, to adopt Staff Analysis One and deny the claim in its entirety. The motion passed, 3-1, with Member Sherwood voting "No."

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

STATEWIDE COST ESTIMATE

Item 6 *Brown Act Reform*, CSM 4469
City of Newport Beach, Claimant
Statutes 1993, Chapter 1136 (AB 1426)
Statutes 1993, Chapter 1137 (SB 36)
Statutes 1993, Chapter 1138 (SB 1140)
Statutes 1994, Chapter 32 (SB 752) and
Consolidation with *Open Meetings Act*, CSM 4257
Statutes 1986, Chapter 641 (AB 2674)

Item 6 was postponed by staff.

EXECUTIVE DIRECTOR'S REPORT

Item 8 Workload, Legislation, Next Agenda

Ms. Higashi noted the following:

- *Workload*. The new procedure where claimants can file duplicate test claim will result in some consolidation of claims. The 83 test claims shown on the November 7 report is expected to amount to 63 agenda items because of the consolidations that are proposed.

Of the 127 incorrect reduction claims noted, 46 are for one particular mandate. The hearing on those will be set for January.

- *Legislation.* The Report to the Legislature was issued after the budget was adopted.
- *Future Hearing Agendas.* The *Brown Act Reform* statewide cost estimate will be set for the December agenda if the data is received from the State Controller's Office. The January agenda will include the *Standardized Account Code* test claim. Also the parameters and guidelines boilerplate issue, *Investment Reports*, and the incorrect reduction claims on *Certification for Teacher Evaluators*. *Crime Victims Domestic Violence Incident Reports* will be moved to February.

PUBLIC COMMENT

Paula Higashi and Nancy Patton were acknowledged for their 25 years of state service and presented with 25-year plaques.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 01-L-04 [*Physical Performance Tests*]
2. *County of San Bernardino v. Commission on State Mandates of the State of California, et al.*, Case Number BS07309, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 01-L-10 [*Property Tax Administration*]
3. *City of San Diego v. Commission on State Mandates, et al.*, Case Number D039095 in the Appellate Court of the State of California, Fourth Appellate District, Division 1. CSM Case No. 01-L-15 [*Special Use; Eminent Domain*]
4. *County of San Diego v. Commission on State Mandates, et al.*, Case Number D039471, in the Appellate Court of the State of California, Fourth Appellate District, Division 1. CSM Case No. 01-L-16 [*San Diego MIA*]
5. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number B156870, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 01-L-17 [*Domestic Violence*]
6. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number B158835, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 01-L-18 [*SEMS*]
7. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 02CS00994, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 02-L-01 [*School Bus Safety II*].

8. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number S109125, in the Supreme Court of the State of California.
CSM Case No. 02-L-02 [*Pupil Expulsions*]
9. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number S109219, in the Supreme Court of the State of California.
CSM Case No. 02-L-03 [*School Site Councils*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.

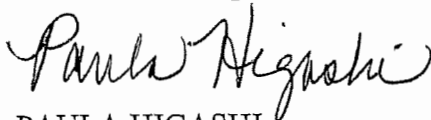
Hearing no further comments, Chairperson Porini adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Porini reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Hearing no further business and upon motion by Member Williams and second by Vice Chair Sherwood, Chairperson Porini adjourned the meeting at 11:20 a.m.



PAULA HIGASHI
Executive Director

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3582
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov



November 22, 2002

Mr. Allan Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

And Affected State Agencies and Interested Parties (See Mailing List)

RE: Adopted Statewide Cost Estimate

Sex Offenders: Disclosure by Law Enforcement Officers ("Megan's Law"), 97-TC-15
County of Tuolumne, Claimant
Penal Code Sections 290 and 290.4
Statutes of 1996, Chapters 908 and 909
Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821 and 822
Statutes of 1998, Chapters 485, 550, 927, 928, 929 and 930

On November 21, 2002, the Commission on State Mandates adopted the statewide cost estimate of \$32,707,000 for the above named program. This amount will be included in our next Report to the Legislature.

Please call Julie Shelton at 916-323-5862 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads 'Paula Higashi'.

PAULA HIGASHI
Executive Director

j:\mandates\1997\97tc15\sce\sceadopttrans.doc

MAILED: Mail List
FAXED: ☒
DATE: 1/22/02
INITIAL: VS
FILE: ☒
WORKING BINDER: ☐

SEX OFFENDERS: DISCLOSURE BY LAW ENFORCEMENT OFFICERS ("MEGAN'S LAW")

Statewide Cost Estimate Adopted: November 21, 2002

Penal Code Sections 290 and 290.4
Statutes 1996, Chapters 908 and 909
Statutes 1997, Chapters 17, 80, 817, 818, 819, 820, 821, and 822
Statutes 1998, Chapters 485, 550, 927, 928, 929, and 930

Mandate Background

The test claim legislation imposes new requirements on local law enforcement agencies regarding notification to Department of Justice of registration of certain convicted sex offenders and provides for public disclosure of the identity of registered sex offenders by local law enforcement agencies. Municipal police departments of cities with a population of less than 200,000 are exempt from this requirement.

The County of Tuolumne filed the test claim on December 30, 1999 and amended the test claim on July 14, 1999. The Commission adopted the Statement of Decision on August 23, 2001, and the Parameters and Guidelines on March 28, 2002. Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by October 1, 2002. The (SCO) provided the unaudited actual claim totals to the Commission on November 5, 2002.

Period of Reimbursement

All mandated costs incurred on or after July 1, 1996, for compliance with the mandate are reimbursable, unless otherwise specified below.¹

Eligible Claimants

Any county, city, city and county, or community college district, that has incurred increased costs as a direct result of this mandate is eligible to claim reimbursement of these costs, except as limited in Section IV, activity 12.

Reimbursable Activities

For each eligible claimant, the following activities are eligible for reimbursement:

A. One-Time Activities

1. Train staff on implementing the reimbursable activities listed in Section IV, activities 2 through 13. (One-time activity per employee.)

¹ The statutes have different operative dates; therefore the reimbursement period for some activities may begin on a different date.

2. Develop internal policies, procedures, and manuals to implement *Sex Offenders: Disclosure by Law Enforcement Officers* ("Megan's Law").
3. Notify every registered sex offender convicted prior to January 1, 1997, within the claimant's jurisdiction of the reduction in the time to register or reregister from 14 days to 5 days. (Pen. Code, § 290, subd. (1)(1).)² (*Reimbursement period begins October 8, 1997.*)

B. On-Going Activities

4. Develop, collect, and transmit sex offender registrations from the local jurisdiction directly into the Department of Justice Violent Crime Information Network. (Pen. Code, § 290, subd. (a)(1)(F).)³ (*Reimbursement period begins January 1, 1999.*)
5. Remove a sex offender's registration from the local jurisdiction's files within 30 days of receiving notice to do so from the Department of Justice. (Pen. Code, § 290, subd. (a)(2)(F)(i).)⁴ (*Reimbursement period begins October 8, 1997.*)
6. If the local law enforcement agency is the current place of incarceration, pre-registration of a convicted sex offender, including the obtaining of a current photograph and fingerprints of the offender as well as a written statement relaying information as is required by the Department of Justice. Notify the sex offender as acknowledgement of the information contained within the pre-registration statement. (Pen. Code, § 290, subd. (e)(1)(A-C).)⁵ (*Reimbursement period begins October 8, 1997.*)
7. Verify that the sex offender's signed statement contains the name and address of the offender's employer, and the address of the offender's place of employment if it is different from the employer's main address. (Pen. Code, § 290, subd. (e)(2)(A).)⁶ (*Reimbursement period begins October 8, 1997.*)
8. Verify that the offender's registration includes information related to any vehicle regularly driven by the offender, including license number, make, model, and such other information as may be requested by the Department of Justice. (Pen. Code, § 290, subd. (e)(2)(C).)⁷ (*Reimbursement period begins October 8, 1997.*)

² As amended by Statutes 1997, chapter 821, an urgency statute effective October 8, 1997.

³ As added by Statutes 1998, chapter 929.

⁴ As added by Statutes 1997, chapter 821.

⁵ As added by Statutes 1997, chapter 821.

⁶ As added and amended by Statutes 1997, chapter 821.

⁷ As added and amended by Statutes 1997, chapter 821.

9. Verify that the convicted sex offender has adequate proof of residence, as determined by the Department of Justice; proof of residence is currently limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents, or any other information that the registering official believes is reliable. If the offender does not have a residence, and no reasonable expectation of obtaining a residence in the foreseeable future, then the local law enforcement agency shall obtain a statement to that effect from the sex offender. (Pen. Code, § 290, subd. (e)(2)(E).)⁸ *(Reimbursement period begins January 1, 1999.)*
10. Provide high-risk sex offenders a printed form from the Department of Justice regarding reevaluation in order to be removed from the high-risk classification. (Pen. Code, § 290, subd. (n)(1)(G)(ii).)⁹ *(Reimbursement period begins September 25, 1996.)*
11. Maintain such photographs and statistical information concerning high-risk sex offenders as is received quarterly from the Department of Justice. (Pen. Code, § 290, subd. (n)(2).)¹⁰ *(Reimbursement period begins September 25, 1996.)*
12. For sheriff's departments in each county, municipal police departments of cities with a population of more than 200,000, and police departments or community college districts, to provide the necessary equipment, and staff assistance for the public to access the sex offender information provided by the Department of Justice on CD-ROM or other electronic medium, and to obtain information from individuals requesting access to the CD-ROM as required by the Department of Justice. (Pen. Code, § 290.4, subd. (a)(4)(A).)¹¹ *(Reimbursement period: September 25, 1996 through December 31, 2003.)*
13. Maintain records of those persons requesting access to the information contained within the CD-ROM or other electronic medium for a minimum of five years, and costs of destruction of such records at the end of such time. Additionally, a record of the means and dates of dissemination of information regarding high-risk offenders must be maintained for a minimum of five years, and costs of destruction at the end of such time. (Pen. Code, § 290, subd. (o).)¹² *(Reimbursement period begins October 8, 1997.)*

⁸ As added by Statutes 1998, chapters 928 and 929.

⁹ As added by Statutes 1996, chapter 908, an urgency statute effective September 25, 1996.

¹⁰ As added by Statutes 1996, chapter 908.

¹¹ As added by Statutes 1996, chapter 908. Penal Code section 290.4 contains a sunset provision wherein it is only operative until January 1, 2004.

¹² As amended by Statutes 1997, chapter 821.

Statewide Cost Estimate

Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	# of Community College District (CCD) Claims Filed with the SCO	Amount Claimed by CCDs	# of City/County Claims Filed with the SCO	Amount Claimed by Cities/Counties	Combined Claim Totals
1996-97	0	0	108	\$1,184,009	\$1,184,009
1997-98	0	0	169	\$3,400,076	\$3,400,076
1998-99	0	0	193	\$3,532,179	\$3,532,179
1999-00	0	0	202	\$4,675,008	\$4,675,008
2000-01	0	0	206	\$5,084,985	\$5,084,985
2001-02	1	\$2,097	185	\$4,818,381	\$4,820,478
2002-03 (2.2%) ¹³	n/a	\$2,143	n/a	\$4,924,385	\$4,926,528
2003-04 (3.2%) ¹⁴	n/a	\$2,212	n/a	\$5,081,965	\$5,084,177
Subtotals		\$6,452		\$32,700,988	
Total					\$32,707,440
Statewide Cost Estimate Total (Rounded)					\$32,707,000

Because the reported costs are prior to audit and partially based on estimates, the statewide cost estimate of \$32,707,440 has been rounded to \$32,707,000.

¹³ Implicit Price Deflator as forecast by Department of Finance.

¹⁴ *Ibid.*

Commission on State Mandates

Original List Date: 1/8/1998

Mailing Information: Notice of Adopted SCE

Last Updated: 11/12/2002

List Print Date: 11/22/2002

Mailing List

Claim Number: 97-TC-15

Issue: Sex Offenders: Disclosure by Law Enforcement Officers (Megan's Law)

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Sacramento, CA 95826

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Fax: (916) 368-5723



DEPARTMENT OF
FINANCE

GRAY DAVIS, GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

April 30, 2001

Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of April 2, 2001 the Department of Finance has reviewed the test claim submitted by the County of Tuolumne-Sheriff's Department (claimant) asking the Commission to determine whether specified costs incurred under Chapters No. 908 and 909, Statutes of 1996, Chapters 17, 80, 817, 818, 819, 820, 821, and 822, Statutes of 1997, and Chapters 485, 550, 927, 928, 929, and 930, Statutes of 1998, are reimbursable state mandated costs (Claim No. CSM-97-TC-15 "Disclosure by Law Enforcement Officers"). Due to workload for preparing the May Revision, we request additional time to prepare our response.

As required by the Commission regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your April 2, 2001, letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail.

If you have any questions regarding this letter, please contact Todd Jerue, Principal Program Budget Analyst at (916) 445-8913 or Jim Lombard, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Calvin Smith

S. Calvin Smith
Program Budget Manager

Attachments

RECEIVED

MAY 02 2001

COMMISSION ON
STATE MANDATES

100

100

PROOF OF SERVICE

Test Claim Name: "Disclosure by Law Enforcement Officers"
Test Claim Number: CSM-97-TC-15

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8th Floor, Sacramento, CA 95814.

On April 30, 2001, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8th Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814
Facsimile No. 445-0278

B-8

State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

B-29

Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

Ms. Jean Green, Employee Relations
Technician
County of Tuolumne-Sheriff's Department
28 N. Lower Sunset Drive
Sonora, CA 95370

Mr. Allen Burdick
DMG-MAXIMUS
4320 Auburn Blvd. Suite 2000
Sacramento, CA 95841

Ms. Annette Chinn
Cost Recovery Systems
705-2 East Bidwell Street #294
Folsom, CA 95630

Ms. Marcia C. Faulkner, Manager
Reimbursable Projects
County of San Bernadino
Office of the Auditor/Controller
222 W. Hospitality Lane, 4th Floor
San Bernadino, CA 92415-0018

Mr. Leonard Kaye, Esq.,
County of Los Angeles
Auditor-Controller
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Mr. Steve Keil
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941

Ms. Laurie McVay
DMG-MAXIMUS
4320 Auburn Blvd. Suite 2000
Sacramento, CA 95841

Mr. Paul Minney
Spector, Middleton, Young & Minney, LLP
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Mr. Andy Nichols
Vavrinek Trine Day & Co., LLP
12150 Tributary Point Drive, Suite 150
Gold River, CA 95670

Mr. Mark Sigman, Accountant II
Riverside Co. Sheriff's Office
4095 Lemon Street
PO Box 512
Riverside, CA 92502

Mr. Paige Vorheis, Bureau Chief
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816


Mr. Joseph D. Mullender, Jr.
Attorney at Law
89 Rivo Alto Canal
Long Beach, CA 90803

Ms. Connie Peters
Youth & Adult Correctional Agency
1100 11th Street, 4th Floor
Sacramento, CA 95814

Jim Spano
State Controller's Office
Division of Audits (B-8)
300 Capitol Mall, Suite 518
PO Box 942850
Sacramento, CA 95814

Mr. David Wellhouse
Wellhouse & Associates
9175 Kiefer Blvd., Suite 121
Sacramento, CA 95826

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 30, 2001 at Sacramento, California.



Mary Latorre

[Faint, illegible handwritten text]

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
ACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov



May 2, 2001

Mr. S. Calvin Smith
Program Budget Manager
Department of Finance
915 L Street
Sacramento, CA 95814-3706

And Affected State Agencies and Interested Parties (See Enclosed Mailing List)

Re: Request for Extension
Sex Offenders: Disclosure by Law Enforcement Officers, 97-TC-15
Claimant: County of Tuolumne
Penal Code Sections 290 and 290.4
Statutes of 1996, Chapters 908 and 909
Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821 and 822
Statutes of 1998, Chapters 485, 550, 927, 928, 929 and 930

Dear Mr. Smith

On April 30, 2001, the Commission on State Mandates received your letter requesting an extension to submit comments on this test claim. The Commission hereby grants your request. The Department of Finance's comments are now due on **June 1, 2001**, and the hearing on this matter is tentatively scheduled for June 28, 2001.

If you have any questions, please contact Staff Counsel, Kathy Lynch, at (916) 323-8221.

Sincerely,

A handwritten signature in cursive script that reads 'Paula Higashi'.

PAULA HIGASHI
Executive Director

c. Mailing List

MAILED: Mail List FAXED:

DATE: 5/2/01 INITIAL: VS

CHRON: FILE: ✓

WORKING BINDER:

Commission on State Mandates

List Date: 01/08/1998

Mailing Information Final Staff Analysis

Mailing List

Claim Number 97-TC-15 Claimant Claim of County of Tuolumne-Sheriff's Department

Subject Penal Code sections 290 and 290.4
908/96

Issue Sex Offenders: Disclosure by Law Enforcement Officers

Mr. Ted Buckley, Legal Advisor
Long Beach Unified School District

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FAX: (562) 997-8092

Mr. Allan Burdick,
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Ms. Jean Green, Employee Relations Technician
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County of Los Angeles
Auditor-Controller's Office
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Tel: (213) 974-8564
FAX: (213) 617-8106

Claim Number

97-TC-15

Claimant

Claim of County of Tuolumne-Sheriff's
Department

Penal Code sections 290 and 290.4

Subject

908/96

Issue Sex Offenders: Disclosure by Law Enforcement Officers

Mr. Steve Keil,
California State Association of Counties

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Mr. John Logger, Reimbursable Projects Manager
Auditor-Controller's Office

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Mr. James Lombard, Principal Analyst (A-15)
Department of Finance

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Interested Party

Ms. Laurie McVay,
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Mr. Andy Nichols, Senior Manager
Centration, Inc.

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Tel: (916) 351-1050
FAX: (916) 351-1020

Interested Person

Claim Number

97-TC-15

Claimant

Claim of County of Tuolumne-Sheriff's
Department

Penal Code sections 290 and 290.4

Subject

908/96

Issue

Sex Offenders: Disclosure by Law Enforcement Officers

Ms. Connie Peters (D-27),
Youth & Adult Correctional Agency

1100 11th Street 4th Floor
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Mr. Mark Sigman, Accountant II
Riverside Co. Sheriff's Office

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FAX: (909) 955-2428

Interested Person

Jim Spano,
State Controller's Office
Division of Audits (B-8)
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COMMISSION ON STATE MANDATES

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May 24, 2001

Mr. S. Calvin Smith
Program Budget Manager
Department of Finance
915 L Street
Sacramento, CA 95814-3706

And Affected State Agencies and Interested Parties (See Enclosed Mailing List)

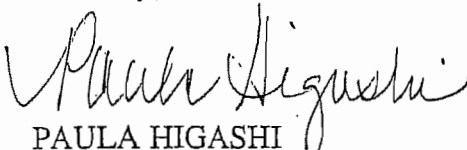
Re: Request for Extension
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Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821 and 822
Statutes of 1998, Chapters 485, 550, 927, 928, 929 and 930

Dear Mr. Smith:

On May 22, 2001, the Commission on State Mandates received your letter requesting a second extension in which to submit comments on this test claim. The Commission hereby grants your request. The Department of Finance's comments are now due on **July 2, 2001**, and the hearing on this matter is tentatively scheduled for **July 26, 2001**.

If you have any questions, please contact Staff Counsel, Kathy Lynch, at (916) 323-8221.

Sincerely,


PAULA HIGASHI
Executive Director

c. Mailing List

MAILED: ☒ 5/24/01 DATE: VS
FAXED: ☒ INITIAL: VS
FILE: VS
WORKING BINDER: _____

Commission on State Mandates

List Date: 01/08/1998

Mailing Information Final Staff Analysis

Mailing List

Claim Number 97-TC-15 Claimant Claim of County of Tuolumne-Sheriff's Department

Penal Code sections 290 and 290.4

Subject 908/96

Issue Sex Offenders: Disclosure by Law Enforcement Officers

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Auditor-Controller's Office

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Claim Number

97-TC-15

Claimant

Claim of County of Tuolumne-Sheriff's
Department

Penal Code sections 290 and 290.4

Subject

908/96

Issue

Sex Offenders: Disclosure by Law Enforcement Officers

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California State Association of Counties

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Mr. Andy Nichols, Senior Manager
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Tel: (916) 351-1050
FAX: (916) 351-1020

Interested Person

Claim Number

97-TC-15

Claimant

Claim of County of Tuolumne-Sheriff's
Department

Penal Code sections 290 and 290.4

908/96

Subject

Issue Sex Offenders: Disclosure by Law Enforcement Officers

Ms. Connie Peters (D-27),
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